



TO

THE REVERED MEMORY

OF

MY FATHER

**LATE BABU HARISH CHANDRA DAS**

THIS BOOK IS MOST RESPECTFULLY

DEDICATED





## **PREFACE TO THE SECOND EDITION**

In this edition, long overdue, the book has been thoroughly revised and partly re-written. Some new matters and all important decisions have been incorporated in this edition. No pains have been spared for its improvement. Turn of events has deprived me of the valuable assistance I was fortunate to receive on the last occasion from two of my friends, e.g. Sri Niranjan Sarkar, M.A., B.L., Advocate, and Sri Bhupendra Kumar Dutta, M.Sc., B.L., Pleader, then members of the Dacca Bar and now stationed in different places. However, in spite of many difficulties I have been able to bring out this edition through the help of Sri D. K. De, M.A., B.L., of the Eastern Law House, Calcutta, to whom my sincere thanks are due.

It is hoped that the book will be found useful to those for whom it is intended.

G C D

July, 1952

## **PREFACE TO THE FIRST EDITION**

There are not too many works on this important and difficult subject of law and an attempt to add a new one may be pardonably considered as not altogether superfluous. In bringing out this book care has been taken to explain the subject in a simple, lucid but concise form supported by case laws both Indian and English. Wherever Indian decision just to the point has been found I have avoided English references. The busy lawyer as well as the practical businessman for whom the work is meant have, in these matter-of-fact days, little time to go through any academic and needlessly elaborate discussion on any subject. Having this in view I have tried to be concise but not at the cost of clearness. Apart from the introduction giving within a

reasonable compass a general outline of the early history and gradual development of this interesting law some connected Acts *e g* The English Bills of Exchange Act, The Reserve Bank of India Act and its ally, The Imperial Bank of India Act, have been embodied in the book for reference. The appendices also include the relevant provisions of the Code of Civil Procedure, The Evidence Act, The Limitation Act, The Stamp Act, with the rules made thereunder and the rules relating to the Notaries Public. Specimen forms of promissory notes, bills of exchange, cheques and various kinds of hundis have also been incorporated in the book. In short, no pains have been spared to make the book a self-contained one specially for the practical businessman.

Before I conclude I must convey my sincere thanks to Mr Brojalal Banerjee, B L, Pleader, Dacca, to Mr Nirmal Chandra Paul, M A, B L, Lecturer in Law, University of Dacca, for the trouble they took in going through the manuscript and to Mr Bhupendra Kumar Datta, M Sc, B L, Pleader, for helping me in the preparation of the table of cases, as well as in going through the proof sheets. My special acknowledgments are due to Mr Niranjan Sarkar, M A, B L, Advocate, Dacca, for writing the Introduction and for the excellent help he has so ungrudgingly rendered to me in the preparation of this work. I may add that but for his invaluable help it would not be possible for me to bring out the book so early.

Should the book prove useful to those for whom it is intended I shall consider myself amply rewarded.

Dacca,  
August, 1937

G C D.

## INTRODUCTION

The Negotiable Instruments are a western concept and the law governing them is necessarily of western origin attributable to (1) the principles applicable to ordinary contracts under the common law, (ii) the principles imported by the Law Merchant founded on the usages of trade, judicially ascertained and recognised. The Law Merchant is nothing but the usages of merchants and traders adjudicated by the law courts and adopted by them as settled law in the general interest of trade and commerce and for the convenience of the public. It is a perfect development of the Customary Law of the English Merchants.

The Negotiable Instruments came into being with the progress of civilization and growth of industries and enterprise. The Bill of Exchange, of all such instruments, came into use first among the Mediterranean trading countries in the thirteenth and the fourteenth centuries and from there it gradually came to England. Originally, a bill of exchange was used to transfer trade-debts between persons in different countries, and the system was extended to apply to inland trade debts, and gradually to private debts also. At the back of the whole system were trust and confidence born of the rigid fulfilment of the obligations arising under such instruments in the early stages of their growth. When trade flourished and commerce expanded, the supply of currency could not keep pace with their demand and credit instruments had to be invented to function as money which they represented.

Soon after the Bill of Exchange, the promissory notes made their appearance. The usage among traders of making promissory notes payable to bearer or to order, began to prevail and was recognised in England by the law courts more than once. But in 1703 Chief Justice Holt denied the promissory notes the attribute of negotiability and persistently refused the merchants the legal sanction of their custom. Therefore, the statute of 3 and 4 Anne C 8, was passed whereby promissory notes were made assignable by indorsement. Cheques are the latest of the devices introduced in England in the seventeenth century when the business of banking was undertaken there by goldsmiths.

The present Act (XXVI of 1881) replaced Statute of William III, C 17 and 3 and Anne C 8 and Indian Acts VI of 1840 and V of 1866 which were in force in this country. Before the passing of this Act there was no enactment in British India clearly defining the law relating to promissory notes, bills of

exchange and cheques. Previously the courts used to apply the Law Merchant in cases of Europeans and in cases of Hindus and Muslims their personal laws. But where the instrument was in English form, English law was applied even if the parties were Hindus. There is a class of instruments called hundies which have been current in this country from long past. These instruments are bills of exchange written in oriental languages and were governed by customs prevailing amongst the merchants of different communities other than Europeans. The customs were not uniform but varied according to places. Local customs prevailed in connection with these hundies over the technicalities of English law. With the growth of trade and commerce necessitating an extensive use of the promissory notes, bills of exchange and cheques it was felt that there should be one uniform law regarding them in British India on the lines of the Law Merchant, a perfect development of the customary laws of the English merchants and the Negotiable Instruments Act based entirely on the principles of English law was eventually passed in 1881 after long and protracted consideration as noted herein-after. The object and purpose of the Act is to legalise a system under which the claims arising upon certain instruments of a mercantile character can be treated like ordinary goods which pass by delivery from hand to hand within the prescribed limits. There was some controversy, however, as to whether the Act should apply in its entirety to hundies as the undernoted extract from the report of the Select Committee shows. But eventually "local usage relating to any instrument in an oriental language" remained unaffected unless "such usages were excluded by any words in the body of the instrument".

The Select Committee in their report stated as follows — "We have certainly considered the arguments urged on the one side by the learned Chief Justice of Bengal for the immediate application of the measure in its entirety to hundies and on the other side by the Government of the Punjab for the total exclusion of hundies from any part of the measure. We have come to the conclusion that the bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that the one main principle of Indian Codification is to reconcile and assimilate, as far as possible, the native and European law on each subject, we would point out that the principle must be applied as to produce as little friction as possible, and we feel assured that the sudden abolition of the numerous local usages as to hundies, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among native bankers and merchants in certain parts of the country. But we believe that the effect of the bill, if passed with a saving of the local usages in question, will be, not as the Chief Justice fears, to

stereotype and perpetuate these usages, but to induce the native mercantile community gradually to discard them for the corresponding rules in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to native bankers and merchants. How long this change will take is, of course, impossible to prophesy. But the Bank of Bengal has supplied evidence that the native usages as to negotiable paper have of recent years been greatly changing and that the tendency is to assimilate them more and more to the European custom."

The Indian Act has codified the English common law relating to promissory notes, bills of exchange and cheques. It differs from the English law on very few points. As has been aptly put, the Act is the fitting of the English boot to an Indian foot, the dressing of an oriental figure in a London made suit. As the negotiable instruments are the most cosmopolitan of all contracts, it is right, therefore, on points of uncertainty, and where there is a lack of authority, to look for the solution of difficulties in the codes and laws of other countries.

In England, the law of negotiable instruments was codified by the passing of the Bills of Exchange Act, 1882 (45 and 46 Vic C 61). The history of the Indian Act is rather a long one. The bill was originally drafted in 1866 by the Indian Law Commission. It was introduced in the Indian Legislative Council in 1867 and was considered by a Select Committee, but objections were taken by the mercantile community to the various departures from the English law which it contained and the bill had to be remodelled in 1877 on a large scale. It was then considered by a Select Committee which made certain alterations both verbal and substantial. It was again referred to a Law Commission in 1880 which did not change anything except making certain important additions regarding hundies. The bill was again referred to a Select Committee which made a few formal changes. This bill as amended was eventually passed into law in 1881. Since the passing of this Act several amendments have been made to bring this Act in conformity with the provisions of the Bills of Exchange Act and to meet the exigencies of the situation.

The first of these amendments was the Negotiable Instruments Act (II of 1885) by which SS 7, 61, 64, 101, 109, 113 were amended, SS 45A and 104A were inserted and S 108 was repealed in part. The most important of these changes was the relaxation of certain formalities which the acceptor of a bill, had to observe before under the Act. These were omitted in the Bills of Exchange Act. In India these conditions stood in the way of some acceptors of certain classes of bills in going

before a notary. A further practical difficulty was that unlike the Bills of Exchange Act, S 113 of this Act provided that the Notarial Act required payment by the payer for honour himself and not by his agent. These defects were cured by Act II of 1885 in conformity with the law of England. Provision was also made at the same time for better guidance and control of notaries public.

Then followed the Negotiable Instrument Amendment Act (VI of 1897) by which section 72 was amended and section 84 substituted. These changes were for the protection of a drawer of a cheque. Thus, where a drawer has a larger amount in the bank than is covered by the cheque drawn on it and for non-presentation of the cheque within a reasonable time by the holder the drawer suffers actual damage, as by the failure of the bank, the drawer is discharged to the extent of his liability under the cheque.

The changes effected by N I Amendment Act (V of 1914) were in SS 13, 16, 138, 139. With respect to section 13 it was mainly a confirmatory amendment. It had long been the practice to endorse negotiable instruments, particularly G P notes, in such a way as to make them payable to two or more payees jointly or, in the alternative, to one or some of several payees. This practice was confirmed by this amendment clearing all the doubts about it. By insertion of sub-section 23 in section 16 rights of the endorsee were protected if his signature was forged. The changes in sections 138 and 139 were consequential as the Decentralisation Act IV of 1914 effected a change in Sec 3 by empowering Local Governments to appoint the Notaries Public. This power again has vested in the Central Government.

After this was passed Act VIII of 1919 amending SS 9, 13, 48, 121. It validated a prevailing custom by which a cheque was treated as a negotiable instrument even though the word "bearer" printed on it was struck out and the word 'order' was not substituted. The Bombay High Court had doubted the validity of this practice in *Dosabhai v Virchand* (49 I C 388) and held that these instruments were not legally negotiable. This amendment put an end to the confusion which the decision in question brought about in the mercantile community.

By the Amendment Act (XXV of 1920) a new section 75A was inserted. It provides that delay in presentment for payment should be excused where the circumstances causing the delay are beyond the control of the holder. This was a post war amendment.

The next Amendment Act (XII of 1921) amended SS 63,

75A, 83 This excused delay in presentment for acceptance and also extended the time within which bills are to be accepted after presentment By the Amending Act (XVIII of 1922) an explanation has been added to Section 131 by which protection is given to collecting bankers in cases where they credit their customers' account with the amount of a cheque before receiving payment of it

The Amendment Act (XXX of 1926) amended sec 80 of the Act This amendment has settled the rate of interest on negotiable instruments by reconciling the provisions of the C P. Code and Negotiable Instruments Act of 1881 in cases where rate of interest is not specified By the Amendment of 1930 (XXV of 1930) S 85A, was inserted to limit the liability of bankers on forged and unauthorised indorsements of demand drafts drawn by one branch of a bank upon another branch of the same bank

The next amendment in 1934 (XVII of 1934) added subsection (2) to section 85 which absolves a banker from all liability in case a cheque is originally a "bearer" cheque and the bank pays the amount to the bearer who presents it for payment in due course notwithstanding any endorsement restricting or excluding further negotiation

In 1947 section 75B was inserted as a temporary provision by section 2 of N I Act and Indian Limitation Act (Temporary Amendment) Ordinance No 31 of 1947 promulgated under section 42 of the Government of India Act 1935 This section dispensed with the necessity of presentment for acceptance and payment of a negotiable instrument if it was not possible for the bank as holder to present it on account of riot or other disturbances in the area where presentment was to be made This temporary provision has since lapsed

The next amendment was the insertion of section 131A by section 2 of the N I Amendment Act (33 of 1947) This section set at rest the doubt as to the applicability of Chapter XIV of the Act to a draft issued by one branch of a bank on another. But by the Repealing and Amending Act (35 of 1950) Act 33 of 1947 itself has been repealed subject to certain savings under section 4 of the Act

Apart from the changes noted above a fundamental change having taken place in the Constitution of the Indian Subcontinent there have been some consequential formal changes in some sections of the Act On and from the 15th day of August 1947 British India ceased to exist In its place two self-governing Dominions—India and Pakistan—were brought into existence by the Indian Independence Act of 1947 passed by the British



Parliament. The laws in force in British India immediately before the 15th of August became the laws of the two Dominions 'British India' wherever the expression occurred in this Act was substituted by the word 'provinces' in its application both to India and Pakistan under the Adaptation Orders passed. Thereafter the constitution of India has been framed by the Constituent Assembly and India has been proclaimed a Sovereign Republic on and from the 26th day of January 1950 and has ceased to be a Dominion. By the consequential Adaptation of Laws Order passed on the same date the expression 'provinces' which was a substitute for 'British India' has been replaced by the word 'States' in India. At the commencement of the Indian Constitution the word States in this Act meant Part A and Part C States to the exclusion of Part B States. But after the passing of Part B States (Laws) Act III of 1951 the word means the territory of India excluding the State of Jammu and Kashmir. In its application to Pakistan it means the provinces of Pakistan. The constitutional change affects the application of section 11 of the Act. So long a bill drawn at Dacca and made payable in Calcutta was an inland bill. Such a bill will now be a foreign bill under the section necessitating observance of all formalities relating to it.

The Act enumerates only three kinds of negotiable instruments *e.g.* promissory notes, bills of exchange and cheques. It also appears from the preamble that the scope of the Act is limited to defining and amending the law relating to these three kinds of instruments alone. The Act is applicable to hundis subject to local usage. But this local usage must be established by the party who relies on it. Subject to local usage the Act applies to hundis as much as to other negotiable instruments. The following are the broad features of the Act.

### **Notes, Bills and Cheques:—**

In the Act we are furnished with the definitions of promissory note, bill of exchange and cheque in SS 4, 5, and 6 from a perusal of which, it will appear that a cheque is treated as a particular form of a bill of exchange. There are, therefore, practically two classes of instruments, namely, (1) Promissory notes, and (2) Bills of Exchange. The broad distinction between these two may be shortly stated to be this, that in a promissory note, the executant promises to make the payment himself, in a bill of exchange he directs some other person to pay. It follows that there are two parties in a promissory note and three in a bill of exchange. A promissory note when endorsed in favour of a third person is like a bill of exchange as it is an order by the endorser upon the maker to pay the

endorsee To be a valid bill of exchange or a promissory note, it must be in writing, must contain an unconditional order or promise to pay, must be signed by the drawer or maker who must be a certain person and the amount payable must be certain. In the case of a promissory note the payment is to be made to the person in whose favour it is executed or to the order of such person or to the bearer of the instrument. In the case of a bill of exchange, the drawee and the payee must be certain and the order must be to pay money and money only.

A cheque is a bill of exchange drawn on a specified banker and payable on demand. While all cheques are bills of exchange, all bills of exchange are not cheques. A banker's cheque is a peculiar sort of instrument, in some respect resembling a bill of exchange, but in some, entirely different. A cheque does not require acceptance and, ordinarily is never accepted. It is not intended for circulation but is given for immediate payment. It is not entitled to days of grace.

### Marking and Certification of Cheques.—

Acceptance of a cheque is not necessary to create any liability to pay as between the drawer and the drawee bank. The liability is a matter of contract between them. The practice of certifying cheques is not judicially or legislatively established in India. Marking or certification of a cheque is not an acceptance. It is essentially different in its nature and effect in the absence of a customer treating certification as an acceptance. There is a practice amongst the bankers for marking cheques as good for payment for the purpose of clearance by which they become bound to each other. This is entirely different from acceptance the effect of which is to create a negotiable liability.

### Parties to negotiable instruments —

The *maker* of a promissory note is one who executes it. The person who draws a bill is called a *drawer*. Where a person after drawing a bill delivers it to the payee the former incurs a liability to the latter. Therefore, ordinarily, a person who is competent to enter into a contract draws a bill. But there is nothing to prevent a person incompetent to contract from drawing a bill—only in such cases the drawer incurs no legal responsibility as no obligation can be enforced against him legally. *Drawee* is generally a person who is under some obligation to the drawer, either by having in his possession funds of the drawer or for some other reason, to make the payment as directed by the drawer. And the moment he formally accepts the bill or the cheque *i.e.* he signifies his assent to the order of the drawer, he is called the *acceptor*, and makes himself liable.

for the payment. It follows, therefore, that he should be a person competent to contract free from all legal disabilities. The person who is the real beneficiary under the bill *i.e.* to whom the payment is to be made is called the *payee*. Where the payee signs his name and makes it payable to some other person, that other person does not become the payee. A corporation, a community or a minor may be a payee. A holder of an instrument means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. The term 'holder' as defined in this section appreciably differs from that of the English law. Under the provision of the English Bills of Exchange Act the holder of a bill is a person who is actually in possession of it. But the present Act goes much further and lays down that one who is entitled to but may not actually be in possession of a note is the holder thereof. A *holder in due course* means a bona fide holder of an instrument for value before it has become due without notice of any defect. The definition lays down three conditions — (1) The transfer must be for consideration, (2) it must be before it is due, (3) it must be without notice of any defect. The holder in due course holds the instrument free from all defects of title and conveys a similar title to others. This special privilege has been conferred on the holder in due course to make his position certain against all possible claims, uncertainty is opposed to the fundamental principle of the Law Merchant whose function is to give currency to these instruments for facility of trade and commerce by protecting the interest of bona fide dealers for value. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser". If the indorser signs his name only, the indorsement is said to be in 'blank' and if he adds a direction to pay the amount mentioned in the instrument to or to the order of, a specified person, the indorsement is said to be "in full", and the person so specified is called the "indorsee" of the instrument.

### Consideration —

Every negotiable instrument shall be presumed to be for valuable consideration until the want or failure of consideration is proved by the person alleging it. In an action on a negotiable instrument, the defendant, unlike other contracts where the plaintiff must prove consideration, must prove want or failure of consideration. The presumption is in favour of the plaintiff.

**Negotiation:—**

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. When a negotiable instrument payable to order or bearer is transferred to a person by endorsement or delivery or by both as laid down in this Act the instrument is said to be negotiated as distinct from transfer by a document under the T P Act. Under the Transfer of Property Act a person cannot transfer a better title than he possesses but under the present Act one having a defective title to the property in the instrument can pass an absolutely unimpeachable title to the transferee (vide section 58).

**Presentment:—**

Presentment for acceptance or payment means that the bill should be exhibited to the drawee so that he may judge for himself whether he will accept or pay it or not, mere notice of the existence of the bill is not sufficient to constitute presentment. In the case of compulsory presentment it must be made within a reasonable time *i.e.*, without undue delay. There can be no hard and fast rule as to what period will constitute reasonable time in all cases. It will depend on the circumstances of each particular case. Delay in presentment for acceptance or payment is excused if it is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. The bill is to be presented to the drawee usually at his place of residence or business unless a specified place is mentioned in the bill for presentment. Where the presentment of a bill is compulsory presentment should be definitely proved in order to enable a party to base his claim on it. It is the holder of the bill who can demand acceptance and, therefore, the holder or his authorised agent is competent to present. One unconnected with the bill in either of the capacities cannot, therefore, present it. Presentation is necessary only for making liable persons other than the makers.

**Payment:—**

Payment of the amount due on an instrument may be either before or at maturity. Payment by a party to the instrument before maturity does not discharge the instrument and its negotiability does not cease. It is merely a purchase of the instrument with all the rights of negotiation. In order to discharge the instrument the payment must be made at maturity. Otherwise the acceptor will be liable to pay it again on the instrument in the hands of a bona fide transferee for value. In the case of premature payment by the maker or acceptor he must get the instrument delivered to him so that he can

make himself and all the subsequent parties liable. Ordinarily, the holder who is entitled to recover the amount due on the instrument is entitled to ask for payment in cash or other currency which is recognised as a legal tender. A cheque is not a legal tender. But this does not prevent the holder from entering satisfaction of the debt by acceptance in any form whether that is recognised as a legal tender or not, so that, if the holder chooses, he can give discharge of the debt by means other than cash or any other legal tender, as for instance, by setting off one debt against another, by taking a fresh bill in lieu of the old one or by accepting satisfaction in some other way.

### **Interest:—**

Under the terms of section 79 of the Act, the Court has no option to disallow interest at the rate, however exorbitant, specified in the instrument and made expressly payable. The interest specified in the note on demand should be calculated from the date of the instrument and not the date of demand, until tender or date of realisation by suit. A stipulation to pay compound interest must be clear and unequivocal. When in spite of agreement to pay interest in the document the rate of such interest is not mentioned, six per cent per annum will be allowed under section 80. The imperative provision in this Act as to the payment of interest at the specified rate has to be read subject to the provisions of the Indian Contract Act, the Usurious Loans Act, the Provincial Money Lender's Acts and other Acts of kindred nature regulating the rate of interest if made applicable to negotiable instruments, that is to say, the court can grant relief when the rate is exorbitant and unconscionable or in excess of the statutory rates laid down therein in spite of the provisions of this Act.

### **Discharge from liability:—**

The discharge of the instrument itself extinguishes all rights of action under it and puts an end to its negotiability. So that, if, after such discharge, the instrument reaches a holder in due course he acquires no right under it. But the discharge of a particular party or parties does not discharge the instrument itself nor does it affect its negotiability. It only releases the party or parties from liability to one party or another and the liability of the parties, not discharged, continues as before. There are three modes of discharge, namely (a) by cancellation, (b) by release and (c) by operation of law. A party whose name is cancelled with the intention of discharging him is discharged from liability to the holder who has cancelled his name and to all other persons who have derived their title from such holder. A party to the instrument may be expressly released

from liability by the holder or the holder may accept a smaller amount in satisfaction of the entire claim, but in order to discharge the party he must do so absolutely and without any condition. The principles of general law are applicable to negotiable instruments as well, and therefore, besides the modes of discharge specified in this section, there are various other modes of discharge by operation of law as when, a debtor is adjudicated an insolvent, or the remedy of the holder is barred by the law of limitation on account of the lapse of time or when one debt merges into another.

### **Dishonour:—**

A bill may be dishonoured by non-acceptance and by non-payment. The drawee is to accept the bill within forty-eight hours of presentation. If he does not signify his acceptance or refuses to accept the bill within the aforesaid period it will be taken as dishonoured. When the maker of a negotiable instrument fails to make payment on the due date it is dishonoured and the holder can at once proceed against the drawer and parties, if any, on the instrument. 'Notice of dishonour' is a condition precedent to make the parties liable. On dishonour the holder of the instrument, or some party thereto who remains liable thereon must give notice of dishonour to all the other parties except the maker, acceptor or the drawee of a note, bill or cheque respectively whom the holder seeks to make liable.

### **Crossed cheque:—**

Ordinary cheques are liable to risks of loss or of being stolen in course of circulation. In order to safeguard the interest of all persons concerned against such loss and theft the system of crossing of cheques has been introduced. The object of crossing a cheque is to give a direction to the banker not to make the payment over the counter but to pay it to a banker only. The obvious advantage of this system of payment through a banker is that it may be easily found out to whose use the amount goes. Crossing does not bar negotiability unless the right of transfer is expressly taken away by the addition of the words "not negotiable" to the crossing.

We have briefly indicated above the history of the negotiable instruments and some of the salient features of the *law* relating to them as obtains in India and Pakistan. On account of the development of industries and the growing expansion of trade and commerce the importance and usefulness of the negotiable instruments cannot be over-estimated. The law relating to these instruments must keep pace with the exigencies of the situation and should be uniform and with that end in view it has been retained as a central subject both in India and Pakistan.

## ADDENDA.

### (1) Secs. 8, 78—

L drew a cheque for a certain sum on C Bank in favour of R M Firm having a current account with B Bank. One of the parties of R M Firm endorsed it in blank and B Bank purchased it from him for its full value and credited the amount in the current account of the firm. On the same date the firm withdrew the amount of the cheque from the current account in the form of a draft. On the dishonour of the cheque by C Bank B Bank made a debit entry for the amount of dishonoured cheque in the current account of the *R M Firm*. Subsequently B Bank instituted a suit on the dishonoured cheque against the partners of R M Firm and L.

Held, that as the B Bank obtained the cheque for consideration it became a holder in due course within the meaning of sec 9 and did not act merely as a collecting agent and that in the absence of any evidence to show that there was sufficient bank balance in the current account of the firm or that there was other sufficient security in the hands of the bank, the mere debit entry in the current account of the firm did not extinguish the right of suit on the dishonoured cheque by discharge of liability under sec 82. The right of suit was not also extinguished either by merger or accord and satisfaction.

*Lachmi Narain v Bharat Bank*, 1951 Pat 621=30 Pat 703

### (2) Secs. 9, 37, 82—

The right of suit on a promissory note vests in the person who can give a valid discharge to its maker or acceptor, and it is not essential that in order to maintain a suit on the basis of a promissory note, the plaintiff must, on the face of the instrument, be the payee or the holder or the holder in due course. This right of the person entitled to the money to institute the suit is irrespective of any indorsement in the document in his favour and is recognised on the basis of the vesting of the ownership of the money in the plaintiff in the absence of a holder as when the payee loses his status under a partition decree by which a pronote is allotted to the share of his brother. The right to recover the money thus vests in the brother who is entitled to sue on it.

*Ram Kishore v Ram Prosad*, 1952 All 245 (F B)

**(3) Sec. 16—**

For an endorsement to bind the payee or the holder of a promissory note it must be made either by the payee or the holder himself or by a duly authorised agent acting in his name under sec 27

*Ram Kishore v Ramprasad*, 1952 All 245 (F B)

**(4) Secs. 30, 31—**

The deftd gave a cheque to the plf in payment of price of goods supplied. The cheque was drawn on branch X of bank A. The plf sent the cheque to bank B for collection. Bank B sent the cheque to branch Y of bank A for realisation. Branch Y realised the amount from branch X but before Y made over the amount to bank B bank A went into liquidation and bank B could not realise the amount. Question was which party was liable to pay to the plf.

The branches of a bank are not juridical persons and the liability lies with the bank if a branch does not pay. This liability is not affected because one branch makes payment to another branch of the same bank. Hence bank A failed to honour the cheque and, therefore, bank B could not be liable and the drawer of the cheque was liable to the plf.

*Bengal Bank Ltd v Satyendra Das & Sons*, 1952 Cal 385

**(5) Sec. 9—**

Possession without sufficient cause to believe existence of defect

The provision in sec 9 that the person must have become the possessor of a cheque 'without having sufficient reason to believe' is more 'favourable to the person who claims to have become holder in due course than the words 'acting bona fide'. His claim would be defeated only if it is found that there was sufficient cause for him to believe that a defect existed. If he fails to prove bona fide or absence of negligence his claim will not be negatived. Where, therefore, a banker comes into possession of a bearer Crossed Cheque on payment, without having any reason to suspect the title of the endorsee thereof, his act does not amount to negligence and if it amounts it does not matter and the banker becomes holder in due course.

*Durga Shaha Mohan Lal Bankers v Governor General in Council and Others*, 1952 All 590

**(6) Secs. 13, 123, 126—**

*Crossing of Cheque*—Effect on negotiability. A cheque is under the loss a negotiable instrument. Its negotiability can be



destroyed only if it is marked as 'not negotiable' on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing a cheque is, as stated in sec 126 of the Act, that the drawee bank must not pay it otherwise than to any banker if it is crossed generally or to the particular banker if it is crossed specially. There is no other effect of the crossing. Any banker other than the drawee bank can pay a crossed cheque which is not made 'not negotiable'.

*Durga Shaha Mohon Lal v Governor General in Council and Others*, 1952 All 590

**(7) Secs. 30, 35, 39—**

*Dishonoured cheque*—Liability to pay. A drew a cheque on B bank in favour of C or bearer and after crossing it generally handed it to C who endorsed it in blank and gave it to his servant D with direction to deposit it in the local treasury. D went to E, a banker by profession, cashed it and disappeared with the money. On instructions from A the bank B refused payment of the cheque to E who demanded payment from A and C the drawer and endorser respectively of the cheque. On their refusal to pay E sued them for the money.

Held E had no cause to believe the defect in title of D and was a holder in due course and as such entitled to payment from A and C and that sec 129 did not apply to E as he was not the drawee bank and further he did not act as D's banker but was simply a holder in due course.

*Durga Shaha Mohon Lal v Governor General in Council and Others*, 1952 All 590

## LIST OF ABBREVIATIONS

A C	Law Reports, Appeal Cases
A L J	. Allahabad Law Journal
A W N	. Allahabad Weekly Notes
A & E	Adolphus and Ellis, Queen's Bench and King's Bench
Act	... Action's Reports, Prize Causes.
Agra	.. Agra High Court Reports
1952 Ajmere	. All India Reporter 1952 Ajmere
Ames I & II	Cases in Bills and Notes by James Barr Ames, Vol I & II
All	. Allahabad Series (Indian Law Reports)
1922 All	... All India Reporter, 1922 Allahabad.
Anst	. Anstruther's Reports Exch
Asp M C	. Aspinall's Maritime Law Cases
1949 Assam	All India Reporter 1949, Assam
Atk	.. Atkyn's Reports, Chancery
B H C R	... Bombay High Court Reports
B L R	... Bengal Law Reports
B & Ad	... Barnewell and Adolphus King's Bench
B & Ald or B & A	Barnewell and Aldersons King's Bench
B & C	... Barnewell and Cresswell King's Bench
B & S	. Best and Smith's Reports
Beav	.. Beavan's Reports Roll's Court
Bing	. Bingham, Common Pleas
Bing N C.	Bingham's New Cases, Common Pleas
Bligh	.. Bligh's Reports, House of Lords
Bligh (N S )	Bligh's Reports House of Lords New Series
Bom	Bombay Series (Indian Law Reports)
1922 Bom	. All India Reporter, 1922 Bombay
Bom L R	. Bombay Law Reporter
Bos & P	Bosanquet and Puller, Common Pleas
Bro & B	. Broderip and Bingham, Common pleas
Bur L J	. Burma Law Journal
Bur L T.	.. Burma Law Times
Burr	.. Burrow's King's Bench
C A	Court of Appeal

CB	.. Common Bench Reports, Common Pleas
CB (NS)	... Common Bench Reports (New Series) Common Pleas
CLJ	... Calcutta Law Journal
CLR	... Calcutta Law Reports
CM & R.	... Crompton, Meeson and Roscoe's Reports Exch
CP	... Common Pleas
CPD.	... Law Reports, Common Pleas Division
CWN	... Calcutta Weekly Notes
C & J	... Crompton and Jorvis, Exch.
C & P	... Carrington and Payne, Nisi Prius
Cab & E.	... Cababe and Ellis, Queen's Bench.
Cal	... Calcutta Series (Indian Law Reports)
1922 Cal	... All India Reporter, 1922 Calcutta
Camp	... Campbell, Nisi Prius
Car. & M.	... Carrington and Marshman's Reports, Nisi Prius
Carth	... Carthew's Reports, King's Bench
Ch	... Chancery
Ch App	... Law Reports, Chancery Appeals
Ch D	... Law Reports, Chancery Division.
Chitty	... Chitty's Practice Reports, King's Bench
Com Cas	... Commercial Cases
Comb	... Comberbach's Reports, King's Bench.
Cooke	... Cooke's Reports
Cowp	... Cowper's Reports
Cox	... Cox, Chancery.
Cr & J	... Crompton and Jervis's Reports.
Cr. & M	.. Crompton and Meeson's Reports, Exchequer
D & Cl	... Dow and Clerk's Reports
D & L	... Dowling and Lownden's Practice Reports
D & R.	... Dowling and Ryland, King's Bench
Deac	... Deacon's Reports
De G J & S	... De Gex, Jones and Smith, Chancery
De G M & G.	.. De Gex, Macnaghten and Gordon, Chancery
De G. & J.	... De Gex and Jones, Chancery
Doug.	... Douglas, King's Bench
Dowl.	... Dowling's Practice and Reports

Dr & S.	... Drewry and Smale's Reports
Dyer.	Chancery
ER	... Dyer's Reports, King's Bench
E & B	... English Reports
E B & E.	... Ellis and Blackburn, Queen's Bench
	... Ellis Blackburn and Elli's Reports, Queen's Bench
East	... East's Reports, King's Bench
Esp	... Espinasse, Nisi Prius
Ex	... Exchequer Reports
Ex D	... Law Reports, Exchequer Division.
Gale	. Gale's Reports, Exchequer
Giff	.. Giffard's Reports, Chancery
H L	... House of Lords
H L C	... Clark's Reports, House of Lords
H Bl	.. Henry Black Stone's Reports, Common Pleas
H & C	. Hurlstone and Coltman, Exch
H & H	.. Horn and Hurlstone Exch
H & N	.. Hurlstone and Norman Exch
Hare	. Hare's Reports, Chancery.
Holt	... F Holt's Reports, Nisi Prius
1951 Hyd.	... A I R, 1951 Hyderabad
Hyde	... Hyde's Reports, Common Pleas
I A	.. Indian Appeals
I C	... Indian Cases
Ind Jur	Indian Jurist
Jac & W.	. Jacob and Walker's Reports, Chancery
J P	Justice of Peace
John	.. Johnson's Reports, Chancery.
Jur	. The Jurist Reports (English)
Keen	. Keen's Reports, Roll's Court
K B	. King's Bench
K & J	.. Kay and Johnson's Chancery
L B R	... Lower Burma Reports
L J C.P.	.. Law Journal, Common Pleas
L J Ch	.. Law Journal, Chancery
L J Ex	.. Law Journal, Exchequer
L J P C	.. Law Journal, Privy Council
L J Q B	... Law Journal, Queen's Bench
L R	... Law Reports
L R H L	.. Law Reports, House of Lords
L T	... Law Times
L W	... Madras Law Weekly
Lah	... Lahore Series (Indian Law Reports).
1922 Lah.	.. All India Reporter, 1922 Lahore

Leach	... Leach's Crown Cases
Lev	... Levinz, K B and C P
M H C R.	.. Madras High Court Reports
M I A	Moore's Indian Appeals (P C)
M L J.	.. Madras Law Journal
M L T.	.. Madras Law Times
M W N.	Madras Weekly Notes
M & Gr	. Manning and Granger, C P
Man & Ry.	. Manning and Ryland's Reports, King's Bench
M & M	. Moody and Malkin, Nisi Prius
M & P.	Moore and Payne, Common Pleas
M & S.	Maule and Selwyn, King's Bench
M & W	. Meeson and Welsley, Exch
Mac & G	Macnaghten and Gordon's Reports, Ch
Mad	Madras Series (Indian Law Reports).
1922 Mad	All India Reporter, 1922 Madras
Mans	Manson's Bankruptcy and Company Cases
Marsh	. Marshall, C P
Moo P C	. Moore's Privy Council Cases
Moo & M	. Moody and Malkin, Nisi Prius
Moo & R.	.. Moody and Robinson, Nisi Prius
Moore	. J B Moore's Reports, Common Pleas
1922 Nag	. All India Reporter, 1922 Nagpur
N L R	.. Nagpur Law Reports
N W P H C R	North-West Province's High Court Reports
N & M	. Nevile and Manning, King's Bench.
N & P.	Nevile and Perry, King's Bench
O C	.. Oudh Cases
Oudh	. Oudh Series (Indian Law Reports)
1922 Oudh	All India Reporter, 1922 Oudh
O W N	. Oudh Weekly Notes
P	.. Law Reports, Probate
1922 Pesh	. All India Reporter, 1922 Peshwar
P C	. Privy Council
P D	.. Law Reports, Probate Division
P L R	.. Punjab Law Reports
P L T	.. Patna Law Times
P L J	.. Patna Law Journal
P R	.. Punjab Records
P & D	... Perry and Davison Queen's Bench
P W R.	.. Punjab Weekly Reporter
Pat	.. Patna Series (Indian Law Reports)
1922 Pat	.. All India Reporter, 1922 Patna

Peak.	. Peake's Reports, NISI PRIUS
Price	. Price's Reports, EXCH
Q B	.. Law Reports QUEEN'S BENCH
Q B D	.. Law Reports, QUEEN'S BENCH DIVISION
R R	. Revised Reports
Rang	. Rangoon Series (Indian Law Reports)
1922 Rang	All India Reporter, 1922 Rangoon
Ross	... Ross's Bankrupt Cases
Russ	. Russell's Reports, Chancery
Ry & M	. Ryan and Moody, NISI PRIUS
S J or Sol Jour	Solicitor's Journal
S L R	Sindh Law Reports
Salk	. Salkeld's Reports, King's Bench
Saund	Saunders's Reports, King's Bench
Sch & Lef.	Schoales and Lefroy, Chancery (Ireland)
Scott	Scott's Reports, Common Pleas
Sel N P	. Selwyn, Law of NISI PRIUS
Show	Shower, King's Bench
Sim	. Simon's Reports, Chancery
1922 Sindh	All India Reporter, 1922 Sindh
Sm L C	. Smiths Leading Cases
Sm & G	Smale and Giffard, Chancery
Smith	T P Smith's Reports, King's Bench
Stark	. Starkie's Reports, NISI PRIUS
T L R	Times Law Reports
T R	. Term Reports
Taunt	. Taunton's Reports, Common Pleas
Tyr	.. Tyrwhitt, EXCH
U B R	. Upper Burma Reports
Vern	Vernon's Reports, Chancery
Ves	Vesey's Reports, Chancery
Ves & B	Vesey and Beame's Reports, Chancery
W R	... Weekly Reporter (Indian) Sutherland
W R	. Weekly Reporter (English)
W W & H.	. Willmore, Wollaston and Hodges, Queen's Bench and Bail Court
Willes	... Willes Reports, Common Pleas
Wils	. Wilson's Reports, King's Bench and Common Pleas
Y & C.	. Younge and Collyr, Exchequer in



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# THE NEGOTIABLE INSTRUMENTS ACT, 1881

(XXVI of 1881)

(AS MODIFIED UP TO DATE)

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## SCHEDULE

*[Repealed ]*

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# THE NEGOTIABLE INSTRUMENTS ACT.

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## ACT XXVI OF 1881.

---

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE  
9TH DAY OF DECEMBER 1881

### An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

[As modified up to date]

WHEREAS it is expedient to define and amend the  
law relating to Promissory Notes,  
Preamble Bills of Exchange and Cheques,  
It is hereby enacted as follows —

#### NOTES

**Preamble.**—The preamble is a valuable key to the interpretation of a statute and furnishes the intention of the legislature bearing on the meaning of the words of the statute. But the preamble cannot affect the meaning of the enacting part where the language, the object and the scope are not open to doubt (a)

**Interpretation of a statute.**—In construing a statute the proper course is to ask what is the plain, natural meaning of the language used in a particular section. In doing so courts will not be influenced by the proceedings in the legislature (b), that is to say, by the reports of the Select Committees, statements of objects and reasons and the debates of the legislature (c).

- 
- (a) In the matter of *Ishan Roy*, 6 Cal 707, *Roberts v Harrison*, 7 Cal 333, *Alanga Manjuri v Sonamoni*, 8 Cal 637, *Sital v Delaney*, 20 CWN 1158, *Finch v Finch*, 1943 Lah 260; ILR 1943 Lah 765; 209 IC 522, *Empetor v Bonwarilal*, 1943 FC 36, 47 CWN 41 (FR) 208 IC 564
- (b) *Administrator General v Premlal*, 22 IA 107, 22 Cal 788; *Empress v Srivharan*, 22 Cal 1017 *Mahalakshmi v Shamrangini*, 1941 Cal 673, 45 CWN 526, 197 IC 853
- (c) *Empress v Tilak*, 22 Bom 112

Nor should the courts take into consideration the marginal notes to the sections (d) and the illustrations appended to them, specially when the effect will be to curtail a right which the statute in its ordinary sense confers (e) If the meaning is doubtful, resort may be had to the previous state of law in the country (f) and also to the preamble (g) Therefore, except in cases of doubt (h), for the construction of the Negotiable Instruments Act, it would not be proper to find out what the Law Merchant was before the Act (i) Where no special considerations arise with reference to Indian circumstances courts are justified in construing the Act according to the provisions of English law (j)

**Object of the Act.**—Before the passing of the Negotiable Instruments Act there was no enactment in British India governing the law relating to Promissory Notes, Bills of Exchange and Cheques Previously the courts used to apply the Law Merchant in cases of Europeans, and in cases of Hindus and Mahammedans, their personal laws But where the instrument was in English form, English law was applied even if the parties were Hindus (k) Customs, prevailing among the merchants of different communities other than Europeans, were applied by courts to transactions amongst them With the growth of trade and commerce necessitating an extensive use of the promotes, bills of exchange and cheques it was felt that there should be one uniform law in British India on the lines of the Law Merchant, a perfect development of the customary laws of the English merchants, and the Act of 1881 based entirely on the principles of English law was passed (l) The object and purpose of the Negotiable Instruments Act is to legalise a system under which the claims arising upon certain instruments of a mercantile character can be treated like ordinary goods which pass by delivery from hand to hand within the prescribed limits (m)

- (d) *Balraj v Jagat Pal*, 8 CWN 689, 31 IA 132  
 (e) *Kailash v Sonatan*, 7 Cal 132  
 (f) *Ibid*, *Keshab v Bhabani*, 18 CLJ 187; *Administrator General v. Premtal*, 22 IA 107, 22 Cal 788  
 (g) *Monilal v Calcutta Improvement Trust* 45 Cal 343  
 (h) *Raghunathji v Bank of Bombay*, 34 Bom 72  
 (i) *Brayalal v Budhnath*, 55 Cal 551, AIR 1928 Cal 148 *Narendra v Kamal* 23 Cal 563  
 (j) *Verappa Chetty v Vallvam*, 52 IC 375, 1919 MWN 780, 10 LW 59  
 (k) *Saved ali v Gopal*, 13 WR 420, *Suba v Ramaswami*, 30 Mad 88 (FB)  
 (l) *Raghunathji v Bank of Bombay* 34 Bom 72  
 (m) *Akhoy v Haridas*, 18 CWN 494, 19 CLJ 335, 22 IC 500

## CHAPTER I

## PRELIMINARY.

1. This Act may be called the Negotiable Instruments Act, 1881

Short title

It extends to the whole of British India, but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language. Provided that such usages may be excluded by any words in the body of the instrument which

Local extent Saving of usages relating to hundis, etc

indicate an intention that the legal relations of the parties thereto shall be governed by this Act, and it shall come into force on the first day of March, 1882

Commencement

## NOTES

**Extent.**—From the first day of March 1882 upto the 14th day of August 1947 the Act was applicable “to the whole of British India”, that is, all the territories in India under the British Administration. The Act was also declared to be applicable to Upper Burma except the Shan States (*n*), to parts of Hyderabad under the Resident, Berar (*o*), Bangalore (*p*), and to British Baluchistan (*p*<sup>1</sup>). Under the Indian Independence Act which was passed by the British Parliament in 1947 and received the royal assent on 18 7 47 British rule came to an end on and from the 15th day of August, 1947 when the Sub-continent of India attained independence and was split into the Dominion of India and the Dominion of Pakistan. Under the Independence Act and under Articles 4 (2) both of Indian Adaptation Order and Pakistan Adaptation Order dated 15 8 47 passed there under all Central and Provincial Acts which were in force in British India on 14 8 47 became applicable in the two Dominions. In this context the expression ‘British India’ wherever it occurs in its application to the Dominion of India would mean “the Provinces of India” and in its application to the Dominion of Pakistan would mean “the Provinces of Pakistan” until altered or modified by competent authority. Since then the consti-

(*n*) *India Gazette*, 1904 P 931 *Burma Laws Act*, 1898 (XIII of 1898) Sec 4 (1) and Schedule 1

(*o*) *India Gazette*, 1904 P 809

(*p*) *Ibid*, 1910 p 1197

(*p*<sup>1</sup>) *British Baluchistan Laws Regulation* 1931 (II of 1913) Sec 3

tution of India has been framed and on and from the 26th day of January, 1950, India has been proclaimed a Republic—Sovereign and Independent—and has ceased to be a Dominion

Article 372 of the Constitution provides that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue to remain in force until modified, altered or repealed by competent authority. The same article authorises the President "to make such adaptations and modifications of any law in force in the territory of India, whether by way of repeal or amendment as may be necessary or expedient for the purpose of bringing the provisions of such law into accord with the provisions of the Constitution and to provide that the law shall, as from such date as may be specified in the Order, have effect subject to the adaptations and modifications so made" Accordingly the President made the Adaptation of Laws Order 1950 on the 26th of January (*p*<sup>2</sup>) under which all existing Central and Provincial laws have effect as from the appointed day i.e. the 26th day of January subject to the adaptations and modifications mentioned therein. The Negotiable Instruments Act is a Central Act. Under the Adaptation Order of 1947 "British India" in its relations to India was substituted by "all the Provinces of India" which were again replaced by "the whole of India except Part B States" by the Adaptation of Laws Order 1950. Under this Order the Act was not to apply to Indian States and acceding States called Part B States but was to apply to Part A States and Part C States, i.e. the territories under the Governors and the Chief Commissioners respectively. Since then Act III of 1951 called the Part B States (Laws) Act has been passed by the Indian Parliament and has resumed the assent of the President on the 22nd of February, 1951. By this Act the clause "except Part B States" has been substituted by "except the State of Jammu and Kashmere" with the result that the Act is made applicable to the whole of India including Part B States except the State of Jammu and Kashmere. In Pakistan the expression "British India" shall be substituted by "the Provinces of Pakistan" until the Constitution is framed and consequential changes are made or until otherwise modified or amended.

**Scope of the Act:**—The present Act seeks to codify the law relating to promissory notes, bills of exchange and cheques. Upon their plain language and also upon authority certain definitions in the Act such as those of 'Negotiable Instrument', 'holder', 'holder in due course' are exhaustive (*q*). But the

(*p*<sup>2</sup>) No C.O. 4 Gazette of India, Extraordinary, 1950 pp 449-605

(*q*) *Zuyya v Mon Mohan Das*, 1940 Bom, 164, 11 L R 1940 Bom 153, 42 Bom L R 248, 188 IC 618

Act, however, is not exhaustive. It is not a compendium of the whole law relating to the transfer of interest in negotiable instruments or the procedure governing actions on them. The Act does not expressly exclude the doctrine of representative action (*q*<sup>1</sup>). It only regulates the issue and negotiation of the promissory notes, bills of exchange and cheques but does not interfere with the assignment or devolution of rights under the ordinary law (*r*). It is a statute dealing with a particular form of contract and will always overrule the provisions of a general character embodied in the Indian Contract Act (*r*<sup>1</sup>). The Act will not apply where Sec 25 of the Indian Paper Currency Act of 1882 amended by Act XXXIII of 1923 and at present embodied in section 31 of the Reserve Bank Act (II of 1934) applies or where there is any local usage relating to any instrument in an oriental language (*s*) but in the absence of local usage it will apply to hundies in an oriental language (*t*).

The usage may, however, be excluded specifically by words to that effect in the body of the instrument with the result that this Act shall prevail over the current usage. If there is no such intention specifically expressed, the usage, wherever proved, shall prevail and this Act shall not be applicable (*u*).

There is a conflict of opinion as to the applicability of the Act to non-negotiable instruments. According to the Calcutta High Court the Act applies to all negotiable instruments and does not apply to non-negotiable ones (*v*). But according to the High Court of Madras, the Act applies to non-negotiable instruments as well (*w*).

**Negotiable Instruments:**—The negotiable instrument is an instrument that can be passed from hand to hand like cash

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- (*q*<sup>1</sup>) *Ibid*, *Mahamed v Ranga*, 24 Mad 654, *Suba v Ramaswami*, 30 Mad 88 (FB) *P R & Co v. Bhagavandas*, 34 Bom. 192 11 Bom LR 335 2 IC 475.
- (*r*) *Lodd Govind v Lepati*, 31 Mad 534, *Rama v Kathi*, 41 Mad 353, *Mangal v Ganeski*, 1936 All 396; 58 All 858, 162 IC 894, 1936 AL J 246
- (*r*<sup>1</sup>) *K H L Saw Mills Co v A M A L Firm*, 6 Rang 246, 1933 Rang 131; 144 IC 866
- (*s*) *Champak v Kishori*, 50 Bom. 765, 28 Bom LR 897, *Jalanchand v Asharam*, 22 CLJ 22, 33 IC 247
- (*t*) *Krishna v Hari*, 20 Bom 488; 20 IC 133; *Mati v Mati*, 9 All 78; *Ram v Prohaddas*, 20 Bom 133
- (*u*) *Jambu v Palaniappa*, 26 Mad 526, 13 MLJ 252, 58 IC 508; *Krishna v Hari*, 20 Bom 488, 20 IC 133
- (*v*) *Kumar Satyapriya v Govinda*, 14 CWN 414, 11 CLJ 236, 5 IC 110
- (*w*) *Subrahmanya v. Arunchalla*, 23 Mad 597; 18 MLJ 186

or goods, by endorsement or delivery (x) Negotiability cannot be given to an instrument by agreement of the parties or otherwise than by an established custom of merchants or by statute (y) These instruments derive their authority primarily from the Law Merchant which is the accumulated product of mercantile usages and customs sanctioned from time to time by the decision of law courts (y<sup>1</sup>) This Act specifically deals with promissory notes, bills of exchange and cheques which are defined in sections 4 to 6 It, however, makes no provision as regards hundies, yet it has never been held anywhere that a hundi is not a negotiable instrument (z)

**Paper Currency Act III of 1871, Sec. 25:**—Section 25 of the Paper Currency Act prohibits the making, accepting or issue of promissory note or bill of exchange or hundi or engagement for payment of money “payable to bearer on demand” or borrowing, owing or taking up any sum of money on any such bills etc The object of this prohibition is to ensure Government monopoly of the issue of Notes in India (a) This monopoly is now vested in the Reserve Bank and the Governor General in Council in some cases Negotiable instruments contain promise to pay a certain sum to a specified person or to his order or bearer To make such instruments payable to bearer on demand will be to attract the operation of section 25 and the penal section 26 of the Paper Currency Act, the addition of a specified payee does not make it legal and no claim can be founded on it (b), although a suit may lie on the original consideration (b<sup>1</sup>) But a contrary view has been held in Bombay and Sindh (c) It is only the making of such instruments that is prohibited (d) It is important to note here that section 25 of the Paper Currency Act imposes no restrictions on the *issue* of cheques made payable

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- (x) *Hazari v Satish*, 22 CWN 1036; 46 Cal 331, 48 IC 966, *Mangal v Ganeski*, 1936 All 396, 1936 ALJ 246, 58 All 858, 162 IC 894
- (y) *Adam v Sakarath*, 1923 Mad 103, 70 IC 738, 1922 MWN 434, 43 MLJ 199
- (y<sup>1</sup>) Halsbury Vol II Sec 823, *Withenbaker v Galastan*, 36 CLJ 256
- (z) *Mangal v Ganeski*, 1936 All 396, 1936 ALJ 246, 58 All 858, 162 IC 894
- (a) *Jetha v Ramchandra*, 16 Bom 689, *Hidayet v Nga Kyang*, 24 IC 721, *Chedambaram v Ayyasami*, 40 Mad 585
- (b) *Low v Sudhanna*, 1931 Cal 791 In the matter of Sec 25 PC Act 1928 All 371; *Chedambaram v Ayyasami*, 40 M 585, *Mian Buksh v Bodheya*, 50A 839, *Maung Po v D Attidas*, 8 IC 962, *Hadyetah v Nga Kyang*, 24 IC 721
- (b<sup>1</sup>) *Bhuson v Kanai*, 41 CWN 537
- (c) *Jetha v Ramchandra*, 16 Bom 689, *Dhanji v Taylor*, 7 IC 604.
- (d) *Ismani v Ezelleah*, 56 IC 930

to bearer on demand (*e*) A person can, however, draw bills or notes payable to a certain person or to order (*e*<sup>1</sup>) or to a man of worth and make them payable on demand The note may become a bearer note by endorsement in blank as it is only the *making* of such notes (*f*) that is prohibited Again, a promote with interest at 9 p c per annum with half yearly rest indicating that the loan is at least for more than a half year and hence not payable on demand (*f*<sup>1</sup>) or a note drawn payable to the person who brings it or to the order of the aforesaid person on demand implying that there must be an endorsement by the payee (*f*<sup>2</sup>) does not offend against section 25 of the Paper Currency Act It is to be noted that the Indian Paper Currency Act has been repealed by the Reserve Bank of India Act 11 of 1934 Sections 31 and 32 of this Act correspond to sections 25 and 26 of the repealed Act The proviso to section 25 beginning with "their customers" has been omitted from the corresponding section 31 of the Reserve Bank Act This has made it clear that the Act does not prohibit cheques even for an overdrawn amount on a bank

**Local usage.**—As already stated, unless specially excluded by words to that effect in the body of the document, a local custom or usage, when proved, must prevail over the provisions of this Act (*g*) But such custom or usage will not override the provision of any other Act except this (*g*<sup>1</sup>) The usage or custom in respect of the instrument must be certain, invariable, reasonable and acquiesced in universally, so that any trader may enter into the contract with that usage as an implied part of it (*g*<sup>2</sup>) The usage may be of recent origin or may be in course of growth (*h*) As an instance of custom, contrary to the provisions of the Act, may be mentioned the Shahjog hundi which is payable to a Shah, *i.e.*, a respectable and

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- (*e*) *Alagappa v Alagappa*, 44 Mad 187, 51 IC 300, *Arunachalam v. Narayanam* 42 Mad 470  
 (*e*<sup>1</sup>) *Ajudhya v Riknath*, 50 All 764  
 (*f*) *Sana v Mooma*, 22 IC 77, *Ismail v Ezelleah*, 56 IC 930  
 (*f*<sup>1</sup>) *Behari v Allahabad Bank*, (1929) All 664  
 (*f*<sup>2</sup>) *Gopalhar v Maryappa*, (1918) MWN 177, 8 LW 501  
 (*g*) *Mangumul v A L V R C T Firm*, 4 MLT 309, *Ghulamsa v. Biswanathan*, 1917 MWN 344, *Champaklal v Keshori*, 50 Bom. 765, *Har Naram v Biharilal*, 1932 Lah 582  
 (*g*<sup>1</sup>) *Veerappa v Mathuraman*, 12 LW 12, 58 IC 508  
 (*g*<sup>2</sup>) *Price v Brown*, 14 Mad 420, *Chandanmull v National Bank*, 51 Cal 43, *Mackenzi v Chamroo*, 16 Cal 702, *Volkart v Vettrebe*, 11 Mad 459  
 (*h*) *Jagamohun v Manukchand*, 7 MIA 263, *Chandanmull v National Bank*, 51 Cal 43, *Hazaramull v Satish*, 46 Cal 331; 48 IC 966, *Satiprasad v Manmatha*, 6 IC 291, 3 Bom LR 260.



responsible person and not to any bearer presenting it (i). When presented it must stand endorsed by a respectable person (j). In one case it has, however, been stated that a Shahjog hundi is saved from the operation of the Act, not by reason of the provisions of section 1 of the Act, which saves local usages relating to instruments in an oriental language, but because a Shahjog hundi does not fall within the definition of a 'negotiable instrument' as mentioned in the Act and is totally outside the scope of the Act (j<sup>1</sup>)

## 2. *Repealed by Act XII of 1891.*

Interpretation clause      3. In this Act—

"India" means the territory of India excluding the  
India                              State of Jammu and Kashmere,

"banker" includes also persons or a corporation  
Banker                              or company acting as bankers and

"notary public" includes also any person appointed  
by the Central Government to per-  
form the functions of a notary  
Notary public                      public under this Act

## NOTES

**India:**—This definition of India has been inserted by the Part B States (Laws) Act, III of 1951 in place of the definition of 'State' which had been inserted by the Adaptation of Laws Order 1950. By this Adaptation Order a State was defined to be Part A State or Part C State in this Act and States meant all the territories for the time being comprised in Part A States and Part C States i.e. all the territories of India under the administration of the Governors and Chief Commissioners to the exclusion of Part B States i.e. the Indian States and Acceding States. 'State' or 'States' are now substituted by 'India' which means the territory of India excluding the State of Jammu and Kashmere. In Pakistan the expression shall mean "the Provinces of Pakistan" whenever it occurs in this Act.

**Banker:**—The section does not define "banker" or 'notary public.' One who deals in money, receives and remits money, negotiates bills of exchange for profit is called a banker (j<sup>2</sup>)

(i) *Bhupati v Hari*, 5 CWN 313, *Lathamal v Keshodas*, 26 All 493

(j) *Muralidhar v Hukumchand*, 1932 Lah 312, 33 PLR 19, *Gones v Lakshmi*, 18 Bom. 570

(j<sup>1</sup>) *Madhavdas v. Debidas*, 59 Bom 97, 1934 Bom. 400 (F.B.)

(j<sup>2</sup>) *Rangasami v Sankaralingam*, 43 Mad 816.

**Notary Public:**—Notary Public is a person who is invested by Government with the authority of attesting and authenticating a document. Documents so attested and authenticated bear the stamp of genuineness. The words 'Central Government' have been inserted for the words 'Local Government' by the Government of India (Adaptation of India laws) Order 1937. The result, therefore, is that a notary Public is to be appointed by the Central Government.

(*Vide* Sections 138 & 139)

## CHAPTER II

### OF NOTES, BILLS AND CHEQUES

4. A "promissory note" is an instrument in "Promissory note" writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### *Illustrations*

A signs instruments in the following terms

- (a) "I promise to pay B or order Rs 500"
- (b) "I acknowledge myself to be indebted to B in Rs 1,000, to be paid on demand, for value received"
- (c) "Mr B I O U Rs 1,000"
- (d) "I promise to pay B Rs 500 and all other sums which shall be due to him"
- (e) "I promise to pay B Rs 500, first deducting thereout any money which he may owe me"
- (f) "I promise to pay B Rs 500 seven days after my marriage with C"
- (g) "I promise to pay B Rs 500 on D's death, provided D leaves me enough to pay the sum."
- (h) "I promise to pay B Rs 500 and to deliver to him my black horse on the 1st January next"

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

#### NOTES

The section defines a promissory note and lays down the essential elements that go to the making of such a note. The definition is exhaustive and excludes from its category instruments which do not comply with the conditions mentioned therein (*f*<sup>s</sup>). In order that a document shall be a promissory

(*f*<sup>s</sup>) *Jetha v Ram Chandra*, 16 Bom 689, *Zujya v Mon Monkhon Das*, 1940 Bom 164, 11 LR 1940 Bom. 153, 42 Bom LR 248, 188 IC 618

note within the meaning of section 4 it must also be intended by the parties to be a promissory note and it must be intended to be negotiable and pass from hand to hand (*j*<sup>4</sup>). To determine the character of the document the court should look to the provisions of the documents and not to the description given to it by the parties (*j*<sup>5</sup>). A hand note is a promissory note within the meaning of this section (*j*<sup>6</sup>). A hundi wherein the maker is himself the acceptor and which contains a promise and not an order to pay is a promissory note (*j*<sup>7</sup>).

The essential elements of a promissory note are —

(i) It must be an instrument in writing—not being a bank note or a currency note

(ii) The instrument must contain an unconditional undertaking to pay

(iii) The instrument must be signed by the maker

(iv) The undertaking to pay must be to pay a certain sum of money only

(v) The payment is to be made to the person in whose favour it is executed or to the order of such person or to the bearer of the instrument

If any one of these elements be lacking the instrument cannot be regarded as a promissory note (*k*)

**(i) Instrument in writing.**—The contract must be reduced to writing which includes type-writing, printing and lithograph etc. It may be so done in a paper, book or parchment. An oral contract to pay a certain sum to a person satisfying all the other elements noted above cannot, for obvious reasons, be treated as a promissory note. The writing may be in ink or pencil. Since it is required to be reduced to writing Sec 92 of the Evidence Act is attracted by this condition. The terms of a promissory note purporting to be an absolute engagement to pay on demand cannot, under the provisions of the Evidence Act, Sec 92, be varied by a contemporaneous oral agreement constituting an undertaking on the part of the plaintiff not to enforce the note by suit till the happening of a certain

(*j*<sup>4</sup>) *Kulsombas v A K M Firm*, 1938 Sind 281, 188 IC 162, 1939 Kar 632

(*j*<sup>5</sup>) *Harsukdas v Dharendra*, 1941 Cal 498, ILR (1941) 2 Cal 107, 73 CLJ 333, 45 CWN 609, 196 IC 161 (FB) *Sushil v Wallullah*, 1941 All 158, ILR 1941 All 264, 195 IC 60; *Tulsi v Tajazzal*, 1934 Lah 93, 148 IC 964

(*j*<sup>6</sup>) *Sagarmal v Buthu Ram*, 1941 Pat 99, 19 Pat 974, 28 190 IC 704.

(*j*<sup>7</sup>) *Sankar v Narayan*, 47 CWN 658

(*k*) *Jetha v Ram Chandra*, 16 Bom 689

event or implying that the legal obligation of payment is to be postponed to, or made conditional upon the happening of a certain event

Proviso 3 does not permit the terms of a written contract to be varied by a contemporaneous oral agreement, but having regard to illustrations (b) and (j), its proper meaning is that a contemporaneous oral agreement to the effect that a written contract was to be of no force or effect at all and that it was to impose no obligation at all until the happening of a certain event may be proved (*k*<sup>1</sup>)

**(u) Unconditional undertaking to pay:**—Payment in the mercantile world cannot depend on contingencies which may or may not happen. Uncertainty is bound to affect trade and commerce to develop and facilitate which, the pro-notes, bills of exchange and cheques are resorted to. The undertaking to pay must, therefore, be unconditional and the promise to pay must be express (*l*). Use of the word “promise” in the instrument is not necessary, if the promise to pay can be gathered either from express words used in the instrument or by necessary implication, the instrument is a pronote (*m*). Intention to make a pronote need not be indicated (*n*). A promise to pay on the happening of an event which, in the ordinary course, is bound to happen is not a conditional promise. Nor is a note made payable through another—*marfatdar*—a conditional one (*o*). The real test is, it is submitted, whether the amount promised will be made payable at all events or not, so that even if the promise to pay is made dependent on events which must, in the normal order of things and ordinary course of human conduct, happen, it is a promissory note. Therefore, a promise to pay “when able” or “at my convenience” or “as soon as possible” is a conditional promise and not a pronote (*p*). A mere acknowledgment of receipt of money or of indebtedness or an admission that the executant is accountable to the other party will not constitute the document into a promissory note (*q*).

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- (*k*<sup>1</sup>) *Ramjiban v Aghurnath*, 2 CWN 188, *Satyendra v Pramananda*, 39 CWN 888
- (*l*) *Nandan v Mt Chittur*, 21 WR 466, *Hunuram v Jhunda Singh*, 1922 Lah 591
- (*m*) *Udit v Bhowani*, 27 All 84, *Govind v Balabhantrao*, 22 Bom 986, *Mathur v Dalpat*, 3 Bom. LR 839
- (*n*) *Parameswam v Sankaraya*, 9 MLT 94
- (*o*) *Mela Ram v Briglal*, 54 IC 976
- (*p*) *Nathubai v Humailal*, 1921 Bom 336, 23 Bom LR 1231, *Shushil v Wallullah*, 1941 All 158 195 IC 60
- (*q*) *Govind v Balabant*, 22 Bom 986, *Mathur v Dalpat*, 3 Bom LR 839; *Ratanji v Preamsankar*, 1938 All 619 178 IC 578

for the simple reason that there is no unconditional promise to pay. According to some decisions an acknowledgment of debt with a promise to pay was regarded as a promissory note but in such cases the promise to pay was to be an express promise and not an implied promise arising out of the acknowledgment (*r*). But this is no longer a good law and it has been recently held that a receipt for money, even if coupled with a promise to pay is not a promissory note (*r*<sup>1</sup>). An account may not be a promote or even a mere acknowledgment (*s*). A balance in an account with "balance due" does not imply a promise to pay (*t*), but a balance struck, after accounting, in favour of a particular person does (*u*). A clause to pay interest at a certain rate on failure to pay the principal amount on a specified date, is not repugnant in a promote (*v*) but a clause to sue for any interest becoming due, on failure to pay interest annually, is repugnant to it (*w*). A note will be none-the-less a promote because it contains recital of the transaction out of which it arises or because collateral security is given, if there is nothing to qualify the promise (*x*). A note containing a promise to pay another a fixed sum every month is bad as vague and indefinite (*y*). Similarly a document containing a promise to pay interest at a certain rate for money of another (*z*) or a mere acknowledgment of debt purporting to be an on demand note with promise to pay interest (*a*), or a document where a person writes to another that he will be liable for payment of the principal and interest due on a promissory note executed by his brother and that he will pay the whole amount after a certain time (*a*<sup>1</sup>) is not a promote.

**(iii) Signed by the maker:**—Execution is completed when the maker puts his signature in the note. Signature is an essential condition so that if the maker writes out the whole

- (*r*) *Manick v Jamuna*, 8 Cal 645, *Tirupathi v Rama Reddy* 21 Mad 49; *Nank v Ram Sarup*, 78 IC 169
- (*r*<sub>1</sub>) *Nawab Akbar Khan v Attar Singh*, 40 CWN 998 (P.C.) 1936 PC 171, *Karamchand v Mir Ahmed*, 42 CWN 989 1938 PC 121, *Lakhi v Nanda*, 43 CWN 330
- (*s*) *Dulmha v Mahadeo*, 28 All 436, *Terupathe v Rama Reddy*, 21 Mad 49
- (*t*) *Hari v Hari*, 8 Bom 194 (FB), *Badri v Gopi*, 1950 Ajmere 4
- (*u*) *Saroj v Bourke*, 56 IC 379
- (*v*) *Mackintosh v Wingrove*, 4 Cal 137 1874 WR 446
- (*w*) *Jyoti Prasad v Brijram*, 1923 Lah 29
- (*x*) *Ram Chandra v Sasha*, 17 Mad 85
- (*y*) *Carter v The Agra Savings Bank Ltd*, 5 All 562
- (*z*) *Nanak Chand v Ram Sarup*, 1924 Lah 684
- (*a*) *Ratan v Perbhudayal*, 1931 All 302, 131 IC 135, *Tirupathy v Rama*, 21 Mad 49.
- (*a*<sup>1</sup>) *Tubic v Tabazai*, 1934 Lah 93

body of the note with his name therein but does not sign it, it is not a promissory note. The signature includes thumb mark, initials or any other mark (b) and may be in any part of the document (c) and it may be in pencil, ink, lithograph stamp or even in printing if these are adopted by the maker (d). In case the executant is able to write, his mark will not be sufficient (e). A promote executed by a person under the authority of a marksman is valid even though the marksman has affixed his mark thereto (f). Signing of the document will not of itself give rise to any contractual relationship. A person may sign a promote and keep it to himself without incurring any obligation. When such a document is tendered by him to the payee and is accepted by the latter, there arises the contract between them (f).

**(iv) Payment of a certain sum of money only:—**The promise to pay must be a promise to pay money alone and not any other thing even in addition and it must be a definite sum of money payable under the promise. If the amount promised to be paid is uncertain (g) or if there is a promise to pay not only a definite sum of money but something, say, paddy in addition (h), the instrument will not be a promote. But the sum does not become uncertain because in addition to the amount specified in the instrument there is a promise to pay future interest at a stipulated rate (i). When, however, one promises to pay another a definite sum and all fines according to rates or after deducting any money which may be due by the latter to the former (j), or when one acknowledges a debt to another for a certain amount but only promises to pay interest at a stipulated rate (k), the instrument offends against the law.

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- (b) *Amamyeh v Yakumlas*, 5 Mad 261, *Sadananda v Emperor* 32 Cal 550
  - (c) *Swrajmal v Bank of Bihar*, 60 IC 746; *Mathura v Babulal*, 1 All 683, *Gangaram v Lachram*, 19 CWN 642, *Mahalakha v Nageswar*, 10 Bom 71
  - (d) *Nirmal v Sarat Moni*, 25 Cal 911, 2 CWN 642, *Chudamburan v Ramaswami*, 27 MLJ 631
  - (e) *Sadananda v Emperor*, 32 Cal 550, Sec 3 (52) *General Clauses Act X of 1897*
  - (f) *Ballayya v Subbayya*, 40 Mad 1171, 44 IC 813, *Radhakrishna v Subrayya*, 40 Mad 550
  - (f) *Damji v Mahammadali*, 1939 Bom 461, ILR 1939 Bom 631, 41 Bom LR 959, 186 IC 657
  - (g) *Harkishore v Guru Mia*, 1931 Cal 387, 35 CWN 53, 58 Cal 752; 131 IC 570, 53 CLJ 37
  - (h) *Muttu Chatti v Muttan Chetti*, 4 Mad 296 (FB)
  - (i) *Lakshminath v Benares Bank*, 7 Pat 41, 1929 Pat 136
  - (j) *Carter v The Agra Savings Bank Ltd*, 5 All 562
  - (k) *Firm Nanakchand v Firm Ram Sarup*, 1924 Lah 684; 78 IC 163, *Ratan Singh v Prabhu Dayal*, 1931 All 302, 131 IC 135

of certainty To determine whether the amount is certain or not the test is if the amount payable can be gathered from the instrument itself without reference to any other thing (*l*). If it can be gathered from the instrument, it is certain, otherwise not

From what has been stated above it would appear that stipulation to pay a certain amount with annual interest at a certain rate is not repugnant to negotiable instruments The contrary view expressed (*m*) does not, it is submitted, appear to be correct as the amount payable is certain and can be ascertained from the instrument itself

**(v) Promisor and Promisee to be certain:**—Certainty is of the essence of a promote It is to be certain not about the amount alone but also as regards the person by whom and to whom the payment is to be made (*n*) Where an instrument executed by one person to another contains an unconditional promise to pay a certain sum of money to the latter who is sufficiently indicated, the instrument is a promote (*o*) Where a promote was made in favour of a person described by his office it is one made in favour of a certain person (*p*) If from the description of the maker sufficient indication follows about his identity the maker is certain Where in a document the maker described himself as the honorary manager of a temple it was held that the description did not offend against the section and did not affect his personal liability (*q*) A note made payable to either of two persons (*r*) or to several individuals (*r*<sup>1</sup>) is a promote The name of a person or a firm to be charged upon a negotiable instrument should be clearly stated on the face or back of the document It is not sufficient that the principal's name should be "in some way" disclosed, it must be disclosed in such a way that, on any fair interpretation of the instrument, his name will appear as the real name of the person liable on the document So where a promissory note was executed by R, described as son of P, who with the other members of his family constituted a joint family firm and there was no reference in the document to the firm of P, the firm was not held liable

(*l*) *Bansidhar v Bu Ah Khan*, 3 All 260 (FB).

(*m*) *Pratap v Purushotham*, 18 Bom LR 124

(*n*) *Harkishore v Guru Mia*, 35 CWN 53, 1931 Cal 387, 58 Cal 752; 131 IC 570, 53 CLJ 37

(*o*) *Paramaswami v San Karaya*, 8 IC 352, 1 MLT. 94

(*p*) *Venkata Rama Reddi v Sri Maharaja Sutharama*, 53 Mad 968, 1930 Mad 1004, 128 IC 870

(*q*) *Siyarthuray Aiyar v Dharma Siva Aiyar*, 8 IC 843, 9 MLT 273

(*r*) 39 MLJ 283

(*r*<sup>1</sup>) *Bankidas v Tanabai*, 1929 Nag 274

on the document (s) When two or more persons make a note they may be jointly or severally liable according to the tenor of the document Ordinarily, when the makers jointly and severally promise to pay, the note is joint and several A note will be deemed to be a joint and several note although it begins with 'I promise' but is signed by two or more persons (s<sup>1</sup>) But a note beginning with 'we promise' and signed by two or more persons is only a joint note and not a joint and several note (s<sup>2</sup>) If there was an understanding that two persons would jointly execute a note and only one signed it and the other did not, the note may not be enforceable against the executant (t), its enforceability would depend on the intention of the parties and the circumstances of the case (t<sup>1</sup>) If a partner executes a promote in which he describes himself in the body of the note as a partner but signs it without any further designation, he does not indicate that he does not intend to make himself personally liable and, therefore, the liability is his and not of the other partners (t<sup>2</sup>)

A promote not made payable to any other person than the payee, that is, not made payable to order or bearer is not a negotiable instrument Without these words the note becomes non-negotiable but remains enforceable by the payee alone It may be assigned like an ordinary chose in action and the assignee can recover the amount without having the special privileges of the holder of a negotiable instrument free from defects (t<sup>3</sup>) To pay to a third party on behalf of the payee but on third party's order cannot be treated as payment to payee or his order as required by the section (t<sup>4</sup>) A document cannot be taken to be a promissory note payable to bearer if the person to whom the money is to be paid or that it is to be paid to the bearer be not expressly stated (t<sup>5</sup>) A note executed in favour of an institution which has no judicial status is void and unenforceable (t<sup>6</sup>)

**Consideration:**—The promise to pay made in the promissory note must be for lawful consideration When the defendant

(s) *P. Chatterjee v Munyandi*, 10 Rang 257, AIR 1932 Rang 97; 139 IC 460, *Srinivasayya v Nagappa*, 1936 Mad 984

(s<sup>1</sup>) Bill of Ex Act, sec 85 Cal (2)

(s<sup>2</sup>) Byles (19th Ed) 7

(t) *Amurthan v Nanjah*, 26 MLJ 257, *Nethri v Mallaputti*, 39 Mad 597

(t<sup>1</sup>) *Bangarasama v Somasundaram*, 27 MLJ 176, 16 MLT 102, 27 IC 161

(t<sup>2</sup>) *Katta Venkata v Kutagulla*, 166 IC 659, 1936 Mad 984, 71 MLJ 738

(t<sup>3</sup>) *Kanayahlal v Domingo*, 1 All 732

(t<sup>4</sup>) *Kotta v Palsetty*, 1933 Mad 306, 64 MLJ 204, 142 IC 121

(t<sup>5</sup>) *Narbada v Sunki*, 1938 Nag 464, 177 IC 889

(t<sup>6</sup>) *Jamboodas v Chawve Digambar*, 1934 Nag 207, (2)



executant has not received any consideration for the promissory note, the instrument does not create any obligation between the holder and the defendant (*t'*). But where there was an agreement between A and B that A would pay B a certain amount if C did not execute a relinquishment of his exproprietary rights under section 15 (2) of Agra Tenancy Act and C executed a sale deed in favour of A but did not apply for surrender of his exproprietary rights within the prescribed period and B sued on the promissory note it was held that A was liable as the consideration for the pronote was legal (*t''*). A promisor executed a pronote believing that the security given to the promisee by the real debtors was sufficient and denied liability for payment. In the absence of any inducement by the promisee he was held liable under the note (*t'''*).

(See also consideration under Section 9 post)

**Bank Notes or Currency Notes and G. P. Notes:—**The definition specifically excludes Bank Notes or Currency Notes from the category of pronotes under this Act. Though these instruments contain promise to pay a definite sum and are practically promissory notes they are not treated as such because they are regarded as cash money (*u*). The holder is entitled to payment without indorsement. But Government Promissory Notes fall within the scope of this section and have all the incidents of a negotiable instrument (*u'*). Similarly Improvement Trust debentures (*u''*) and war bonds are negotiable (*u'''*).

**Form:—**No particular form is prescribed for a promissory note, provided, the essential ingredients described above are there. It is not necessary to put the words "on demand" in the pronote as a matter of form (*v*). Non-mention of the date of execution does not make the instrument invalid and independent evidence of the date is admissible (*w*). A pronote may be antedated or post dated (*x*). Mention of the place of execution is unnecessary except for determining the forum, and parties are free to insert in the instrument as place of execution any place even other than where it is actually executed (*y*).

(*t'*) *Amur Chand v Krishan*, 1936 Cal 315, 167 IC 301

(*t''*) *Baramdin v Jamuna*, 1937 All 123; 1937 ALJ 15 167 IC 326

(*t'''*) *Bank of Bihar v Madhusudhan*, 1937 Pat 428; 170 IC 451

(*u*) *Empress v Juggeswar*, 3 Cal 379, *Ramiah v Off Assignee*, 33 Mad. 196

(*u'*) *Hiralal v Rajkumar*, 12 CLJ 470; (*u''*) 1933 Mad 376 142 IC. 296 (*u'''*) 1932 (PC) 22 36 CWN 35

(*v*) See Section 19 post

(*w*) Indian Evidence Act, sec 92

(*x*) *Raghu v Aravamutha*, 34 IC 617, 1926 MWN 728

(*y*) *Meenakshi Ginning and Pressing Co v Sreeram Naidu*, 28 Mad 19

**Instrument—it can be split up:**—When an instrument is found to be insufficiently stamped though incidentally it may amount to a receipt or an acknowledgment of liability what the Court should consider is whether it is primarily a promissory note. If the recitals show that it is primarily meant to be promissory note then the stamp affixed to it must be taken to have been affixed as a promissory note and not as a receipt or acknowledgment of liability. Where the instrument as a whole is insufficiently stamped it would not be proper to allow it to be split up into two portions and to regard the duty paid on it as having been paid on the portion which it suits the plaintiffs to retain although the primary purpose of the document is contained in the other portion. If, however, there are any recitals in a document which, as such, are not chargeable with duty, then it may be possible to use such recitals as evidence for an entirely different and independent matter (*y*<sup>1</sup>).

**Stamp**—Revenue stamps of requisite value under the Indian or Pakistan Stamp Act should be affixed. An unstamped or under stamped promissory note is inadmissible in evidence and no claim can be founded on the documents although, under certain conditions, a suit will lie on the original consideration (*z*). Use of a wrong stamp may not warrant a dismissal of the suit. Thus, a suit on a promissory note executed on March, 28, 1934, was not dismissed merely because it was affixed with revenue stamps the use of which was made compulsory by the Government from April 1, 1934, but which were available before, specially when the defendant admitted his liability (*z*<sup>1</sup>). It is necessary to cancel all the stamps as it has been held by some High Courts that where all the stamps are not cancelled the document is not admissible and no decree can be passed on the basis of a note inadmissible in evidence for want of cancellation of stamp (*a*).

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- (*y*<sup>1</sup>) *Bibbu v Gokaram*, 1937 All 101, 1936 All J 1931, 166 IC 919  
 (*z*) *East Bengal Commercial Bank v Surendra*, 39 CWN 1235; *Tarachand v Tamruddin*, 39 CWN 1241, *Muhatabuddin v Mahammad*, 40 CWN 473, 166 IC 152, *Indra v Hiratal*, 40 CWN 696, *Seikh Akbar v Seikh Khan*, 7 Cal 256, *Govinda v Ram*, 29 CLJ 508 60 IC 107, *Ramasami v Murgiah*, 59 Mad. 268 (FB) *Perumal v Kamakshi*, 1938 Mad 785, 177 IC 236; *Bhuson v Kanat*, 41 CWN 537, *Eu Hpe Yar v Teh Lu Pe*, 1948 Bur LR 810

(*z*<sup>1</sup>) *Banka v Ram*, 1937 Pat 560, 171 IC 591

- (*a*) *Dayaram Surajmal v Chandulal*, 27 Bom LR 1188, 1925 Bom 520, 90 IC 689; *Mamg Ba v Ma Kyi*, 2 LBR 103, *Krishan v Ma Aye* 14 Rang 383, *Khazan v Ataulla*, 1933 Lah 148, 148 IC 154, *Sohan Lal v Raghunath*, 1934 Lah 606, *Srichand v Lajpatram*, 1939 Lah 31

**Mode of Cancellation:**—A person may cancel an adhesive stamp by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his writing or in any other effectual manner (*a*<sup>1</sup>) Drawing lines across the stamp was in some cases held to be effective cancellation (*a*<sup>2</sup>), but in another case drawing of two parallel lines was held insufficient (*a*<sup>3</sup>) The question whether or not a stamp has been effectively cancelled is one of fact to be decided by the examination of the stamp itself (*a*<sup>4</sup>) and no general rule of what would constitute effective cancellation can be laid down (*a*<sup>5</sup>)

5. A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument

A promise or order to pay is not “conditional,” within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain

The sum payable may be “certain,” within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due

The person to whom it is clear that the direction is given or that payment is to be made may be a “certain

(*a*<sup>1</sup>) Indian stamp Act, sec. 12 (3)

(*a*<sup>2</sup>) *Kishori v Ram*, 1921 Lah 120, 60 IC 559, *Mela v Brij*, 54 IC 976.

(*a*<sup>3</sup>) *Brabadrapa v Bhimji*, 28 Bom 432

(*a*<sup>4</sup>) *Mela Ram v Brijlal*, 54 IC 976

(*a*<sup>5</sup>) *Solamalai v Vedamalai*, 16 IC 98

person," within the meaning of this section and section 4, although he is mis-named or designated by description only

## NOTES

**Bill of Exchange and Pronote:**—Like the preceding section defining a pronote this section defines a bill of exchange. It is, however, important to note the distinction between these two classes of instruments. In a promissory note, the maker of the note unconditionally undertakes to pay, whereas in a bill of exchange the maker of it gives an unconditional order directing a certain person other than himself to pay. The liability of the maker of the promissory note is absolute because he unconditionally binds himself to pay whereas the obligation undertaken by the drawer of a bill of exchange is only conditional since he becomes a surety for payment in case of default by the drawee. The maker of the promissory note is the principal debtor, whereas the drawee of a bill of exchange on acceptance becomes the principal debtor as he accepts the primary liability to pay according to the tenor of the bill. It is only when the drawee fails to pay that the drawer becomes liable as his surety (a<sup>6</sup>). Thus, in a promissory note there are only two parties *viz.*, the promisor and the promisee while in a bill of exchange there are three *e.g.* the drawer, the drawee and the payee.

Barring this point, all the other essential features of the pronote are also to be found in the bill of exchange. A pronote, when endorsed in favour of a third person, is like a bill of exchange as it is an order by the endorser upon the maker to pay the endorsee.

As noticed in the case of the promissory notes a valid bill of exchange must have the following prerequisites —

- (1) it must be in writing,
- (2) it must contain an unconditional order to pay;
- (3) it must be signed by the drawer who must be a certain person,
- (4) the drawee must be certain,
- (5) the payee must be certain,
- (6) the amount payable must be certain,
- (7) the order must be to pay money and money only.

**Writing:**—To be a valid bill of exchange it must be reduced to writing. An oral direction to pay cannot be regarded as a bill. There is no particular language or form

(a<sup>6</sup>) *Radhakisan v Hiralal*, 58 IC 313; *Wallaboy v Jagjiban Das*, 1936 Nag 260, 167 IC 907

prescribed for this. But the document, so reduced to writing, must conform to all the conditions laid down in this section. As for what constitutes writing, see notes to section 4 under the head 'instrument in writing'

**Unconditional order to pay:**—The order to pay must be without any condition whatsoever except as provided for in the second paragraph of this section. That paragraph seeks to lay down what is meant by an unconditional order. It has been noticed before that payment in the mercantile world cannot be made to depend on contingencies which may or may not happen. Uncertainty is bound to affect trade and commerce for the development and facility of which the bills of exchange, promissory notes and cheques are resorted to. The bill must, therefore, be payable at all events. Even if it is made dependent on the happening of an event it must be such an event which, in the normal order of things and ordinary course of human conduct, must happen (*b*), otherwise, "it would perplex the commercial transactions of mankind and diminish and narrow their credit and negotiability, if paper securities of this kind were issued out into the world encumbered with conditions and contingencies, and if the person to whom they were offered in negotiation were obliged to enquire when those uncertain events would be reduced into certainty" (*c*). A bill dependent on a contingent event is absolutely void (*d*) and even if the event happens the defect will not be cured (*e*). Thus, an instrument containing an order to pay "thirty days after the arrival of the ship Paragaon in Calcutta" is not a bill of exchange even if the ship arrives (*f*). Similarly, an instrument containing an order to pay ninety days after sight or when realised, is not a good bill (*g*). Then again an order to pay out of a particular fund is a conditional order and is, therefore, bad as it leads to uncertainty, but a mere direction to the drawee to debit it against a particular account (*i*), or to reimburse himself from a certain fund (*j*) is not bad. The conditional direction, to vitiate the bill must be addressed to the drawee; if it is not addressed to the drawee the bill is a good bill (*k*).

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(*b*) *Colehan v Cooke*, (1742) Willes 393

(*c*) *Carlos v Fancourt*, (1794) 5 TR 482

(*d*) *Ibid*, *Palmer v Pratt*, (1824) 2 Bing 158

(*e*) *Hill v Halford*, (1801) 2 Bos & P 413

(*f*) *Palmer v Pratt*, (1824) 2 Bing 185

(*g*) *Alexander v Thomas*, (1851) 16 QB 333

(*h*) *Jenny v Herle*, (1723) 2 Ld & Raym 1361, *Dawkes v Dedoraine*, (1771) 3 Wills 207

(*i*) *Guaranty Tyast Co v Hannay*, (1918) 1 KB 43

(*j*) *Macleod v Sneen*, (1726) 2 Stra 762

(*k*) *Nathan v Ogdens Ltd*, (1905) 94 LT 126 (CA)

Although direction of the drawer to the drawee must be unconditional, the acceptor or the endorser may make his own liability conditional. When an instrument becomes bad as a bill it may be acted upon by the drawee as an authority to make payment to the payee (*l*). Even a bad bill, if properly stamped, can be used in evidence as an agreement between the parties.

There is no special form of the order. It is enough if what is written amounts to a definite direction to pay as 'credit in cash' (*m*) and the holder can present it as a demand as of right and not as a matter of favour. Mere supplication will not amount to an order (*n*). But insertion of some courtesy terms will not make the order bad (*o*), as the term "order" used in the section is not to be construed as a command. A "chit" addressed to a person with a request to pay the amount, mentioned therein, is not a bill of exchange and, as such, does not require a stamp (*p*). Where the plaintiff agreed to lend money to the defendant for payment of his trade debts and in pursuance of the agreement gave his creditors chits for certain sums which were addressed to the plaintiff and requested him to pay the amounts mentioned therein which were paid, it was held that these chits were neither bills of exchange nor cheques and, as such, not inadmissible in evidence for want of stamps and that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of clause (6) section 3 of the Stamp Act, 1879, and the chits did not require a stamp (*q*).

**Drawer certain—signature.**—The drawer must be certain *ie* the person who enters into the contract should be pointed out with certainty and his signature should be obtained. Acceptance of an instrument not signed by the maker does not make it a good bill (*r*). There can be more than one drawer of a bill of exchange with joint liability but not with alternate liability. The drawer or drawers must undertake the responsibility of payment to the holder if the drawee or the acceptor dishonours it. It is only when the drawee fails to pay that the drawer would be liable as his surety (*r*<sup>1</sup>).

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(*l*) *Buck v Robson*, (1878) 3 QBD 686

(*m*) *Eddison v Colingredge*, (1850) 19 LJCP 268

(*n*) Daniel, Sec 35

(*o*) *Rutt v Webb*, (1794) 1 Esp 129

(*p*) *Ratulal v Vrijbhukhan*, 17 Bom 684

(*q*) *Ibid*

(*r*) *Goldsmith v Hampton*, (1858) 5 CB (NS) 94; *Mc Call v. Taylor*, (1865) 34 LJCP 365

(*r*<sup>1</sup>) *Wallbhoy v Jagjibandas*, 1936 Nag 260; 167 IC 907

The bill to be complete must be signed by the maker Without his signature it remains inchoate What constitutes signature has been dealt with in section 4 *ante* under the head "signed by the maker"

**Drawee certain:**—Like the drawer the drawee must also be definitely indicated avoiding all chances of uncertainty If, however, the drawee is not named in the bill itself which only mentions the place of payment and it is accepted by a person of the same address he is estopped from taking the plea that he is not the drawee or the acceptor (*s*) One person cannot accept a bill addressed to another (*t*) There may be joint drawees of a bill but an order addressed to two or more persons in succession enjoining a series of acceptances is bad and is not a bill of exchange (*u*) Where the drawer and the drawee are the same person, the holder may treat it as a bill of exchange or a promote at his option (*v*)

**Payee certain:**—The payee of a bill must be definitely named or indicated in the instrument with reasonable certainty to enable the drawee to make the payment to a right person Mere misdescription of the payee in the bill will not invalidate it and oral evidence will be admissible to prove that a certain person, though misdescribed, is the right payee Where, owing to ignorance of the event of death, a bill was drawn payable to a dead man it was not held invalid but was held payable to the personal representative of the deceased (*w*) A bill made payable to one of several persons in the alternative is a good bill (*x*) A bill payable "— order" when endorsed by the drawer means it is payable to drawer's order and is valid (*y*)

**Sum certain and money alone:**—See notes to section 4 under the head 'Payment of a certain sum of money only'

For specimen bills of exchange see Appendix 1

**Bill of Exchange and Hundi:**—Hundis are negotiable instruments written in some oriental language, being sometimes bills of exchange and sometimes promotes, and are subject to local usages and are not affected by the provisions of this Act (*z*) From long before this Act the hundis have been in

(*s*) *Jogesh v Mahamad*, 57 Cal 695, 1930 Cal 697, 129 IC 305

(*t*) *Jagannath v Heap & Co*, 2 IC 804

(*u*) B of E Act, Sec 6 (2)

(*v*) *Radhakissen v Hiralal*, 58 IC 313, *Bibikazmi v Lachman*, 1930 Pat 239

(*w*) *Murray v East India Co*, (1821) 5 B & A, 204

(*x*) *Kanayalal v Balaram*, 16 LW 608

(*y*) *Chamberlain v Young*, (1893) 2 QB 206

(*z*) *Hamaraju v Beharilal*, 1932 Lah 582, *Mangal v Ganeski*, 1936 All 396; 162 IC. 894.

circulation in this country with varying usages attaching to them. Under the Hindu law a hundi payable to order was negotiable without an endorsement by the payee (a) A dishonoured hundi returned without any endorsement to the endorser could be sued upon by the latter (b) A forged endorsement confers no title both under the Law Merchant and the Hindu law (b<sup>1</sup>) Customs and usages, as stated before, govern the incidents of a hundi Thus, under a Murshidabad custom, the court allowed interest on a hundi payable many days after sight (b<sup>2</sup>), and recognising a usage at Dacca the court relieved a Gomastha of his personal liability when he drew a hundi on his principal without signing as agent (b<sup>3</sup>) overriding the ordinary rule (b<sup>4</sup>) There are many other instances where customs or local usages have been given effect to by the courts (b<sup>5</sup>) Even oral acceptance is justifiable under custom (b<sup>6</sup>) In a suit on hundi the first essential is to ascertain whether the hundi is a promissory note or a bill of exchange (c) A bill of exchange may include a hundi, but it does not follow that a hundi includes a bill of exchange (d) A hundi becomes a bill of exchange on the acceptance of a third party, though the bill is not addressed to him and he is not named as drawee provided his acceptance is not inconsistent with the address No party can be made liable as acceptor of a bill addressed to another but where no party is named in the address the acceptor may be deemed, by his endorsement of acceptance, to have admitted himself to be the party addressed (e) If the drawer and drawee be the same person the instrument may be treated as a bill of exchange (f). A hundi may be written on more papers than one but the aggregate value of the stamp papers should represent the correct value of the stamp to which the hundi is liable (g). Proof of presentation followed by dishonour is necessary to

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(a) *Rajroopram v Buddhu*, 1883 1 Hyde 155

(b) *Byjnath v Becharam*, 5 WR 10

(b<sup>1</sup>) *Thakurdas v Fatehmal*, 7 BLR 275, 16 WR 3

(b<sup>2</sup>) *Dhanput v Maharaja Jagat*, 8 WR 86

(b<sup>3</sup>) *Hari v Krishan*, 17 WR 442

(b<sup>4</sup>) *Pogose v Ram Krishan*, 4 WR 86

(b<sup>5</sup>) *Sugan v Mulchand*, 1 Bom 26, *Indra v Lachmi*, 7 BLR 682; *Imperial Bank v Nela Chand*, 21 Bom 294, *Surojmal v. Kashiprasad*, 1933 Nag 389

(b<sup>6</sup>) *Pama v Hargopal*, 1 Lah 80

(c) *Radhakissen v Hiralal*, 58 IC 313

(d) *Sarada v Govmda*, 23 CWN 534, 29 CLJ 305, 51 IC 88

(e) *Jogesh v Mahammad*, 57 Cal 695, 1930 Cal 697, 129 IC 305

(f) *Radhakissen v Hiralal*, 58 IC 313, *Bibi Kazmi v Lachman*, 1930 Pat 239

(g) *Sarada v Govmda*, 23 CWN 534, 29 CLJ 305, 51 IC 88



succeed in a case on a hundi (*h*) The name of the drawer of a hundi need not be separately entered in the document at any specific place but it is sufficient if it shews the person addressed, that it has been made by a third person who purports to be bound thereby (*i*) Of the various kinds of hundis, the important ones are noticed below

(1) **Shahjog Hundi**.—This kind of hundi is payable only to the respectable holder unlike a hundi payable to a bearer or order (*j*) An attested Shahjog hundi, insufficiently stamped, can be sued on as a bond (*k*) The Act does not apply to Shahjog hundis as such hundis are not negotiable instruments within the meaning of this Act But many of the incidents of negotiable instruments govern these hundis under mercantile usages and customs (*k*<sup>1</sup>) It is a striking illustration of the mercantile customary law prevalent in India In considering the right to a hundi, the court is as much bound to put a reasonable construction upon the words of an endorsement or an acceptance as upon any other part of the document When a maker or a rightful owner of a hundi payable in terms of the Shahjog, endorses it to A, he obviously means to pass the right of dealing with the hundi to A alone It may well be that, according to Hindu customary law, A can transfer his right to a third person B by word of mouth or mere delivery notwithstanding that the special indorsement to himself is in writing The term Shahjog should be subordinate to the directions of the successive owners and should mean “the right men to be paid” There is no rule of Hindu law, customary or otherwise, which should have the effect of making the word Shahjog mean payable to the bearer quite independently of the endorsement (*k*<sup>2</sup>) There is no principal of mercantile expediency having the force of law or otherwise which would be served by the Courts disregarding the direction of the endorsee and treating a specially endorsed and accepted hundi as if it were an English Negotiable Instrument made payable to bearer and, as such, part

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(*h*) *Genda Lal v Balkishan*, 1922 All 422, 70 IC 596

(*i*) *Surajmall v Bank of Behar*, 60 IC 746

(*j*) *Thakoredas v Fatehmull*, 7 BLR 275, 16 WR 3, *Lal Chand v Keshodas*, 26 All 493, *Muralidhar v Hukumchand*, 33 PLR 19, AIR 1932 Lah 312, *Bhupat v Hari*, 5 CWN 313

(*k*) *Keshorichand v Asharam*, 22 CLJ 209, 19 CWN 1326, *Jalan Chand v Asaram*, 22 CLJ 22, 33 IC 247, *Lalchand v Keshodas*, 26 A 493

(*k*<sup>1</sup>) *Kamalsingh v Rambhorosa*, 1943 Nag 99, 205 IC 387 (FB) *Tessaram v Virbhandas*, 1947 Sind 140

(*k*<sup>2</sup>) *Muraliddar v Hukumchand*, 1932 Lah 312, 33 PLR 19 143 IC 257

of the currency of the country (l) A hundi payable to Shahjog will pass by mere delivery regardless of the authenticity or otherwise of any endorsement which may be put on it (m) A modified view seems to have been held in a Bombay case (n) In an Allahabad case it has been held that a Shahjog hundi when transferred by endorsement is payable to the bearer as the phrase "a respectable person" means the same thing as "a bearer" and it is a perfectly good negotiable instrument (o)

Under the Law Merchant where the title of the holder is based on forgery, the holder is liable to make good the amount to the drawee Under the usage applicable to Shahjog hundis the Shah is liable to repay the amount with interest to the drawee unless he produces the forger (o<sup>1</sup>) In a full bench decision of the same Court it has been laid down that there is no custom relating to Shahjog hundis by which a drawee making payment to a person having no title, although a Shah, is absolved from liability (o<sup>2</sup>)

**(11) Jokhmi Hundi:**—This is another instance of customary law among the Indian merchants This hundi is drawn on condition that the money shall be payable only in the event of the arrival of the goods against which it is drawn (p)

Jokhmi means "against risk" or "against goods" The drawer draws this kind of hundi on the drawee on condition that in the event of the arrival of the goods it will be accepted and payment will be made and then negotiates it for value which may be less than what is covered by the instrument It enables the drawer to raise money, on the strength of the instrument, from any person who desires to make some profit at a certain risk; for, if the goods are totally lost the money is not recoverable by the holder either from the drawee or from the drawer It is in the nature of an insurance policy, with this difference, that the money is paid beforehand, to be recovered if the ship is not lost But even in that case if the drawee refuses to accept it, the remedy of the holder is against the drawer only (p<sup>1</sup>) In the case of partial loss of the goods the holder is entitled to recover the amount

(l) *Thakuradas v Fatehmull*, 7 BLR 275, 16 WR 3

(m) *Goursimull v Dhansuk*, 7 BLR 289 (note)

(n) *Ganeshdas Ramnarayan v Lachminarayan*, 18 Bom 570

(o) 1884 A W N 3

(o<sup>1</sup>) *Madhavdas v Sitaram*, 1934 Bom 402; 59 Bom 252, 153 IC 959  
*Tessaram v Virbhandas*, 1947 Sind 140

(o<sup>2</sup>) *Madhavdas v Devidas*, 1934 Bom 400; 59 Bom 97, 152 IC 609,

(p) *Jadown v Jetha*, 4 Bom 333

(p<sup>1</sup>) *Ibid.*

**(iii) Namjog Hundi:**—Just as a Shahjog hundi is payable only to a Shah or a respectable person the Namjog hundi is payable to the person named in the document. The forms of these two hundis are similar, only the name of a specified payee has to be inserted in place of the Shah. It is payable also to the order of the payee and can be negotiated like a bill of exchange by endorsement and delivery. But if the hundi is accompanied by a scrip containing the description of the person in whose name it is granted it cannot be endorsed or transferred. In that case it is to be paid to that person alone (*p*<sup>2</sup>)

**(iv) Jawabee Hundi:**—It is like a letter of recommendation to a banker for payment of a particular sum to a person to whom money has to be paid. A person desirous of making a remittance writes to the payee and delivers the letter to a banker who either endorses it on to any of his correspondents near the payee's place of residence or negotiates its transfer. On its arrival, the letter is forwarded to the payee who attends and gives his receipt in the form of an answer to the letter, which is forwarded by the same channel to the drawer of the order. The banker may cancel the order for payment by an advice to his correspondents at any time before payment, in case the so-called drawer fails in his promise to provide the banker with the amount of the order (*p*<sup>3</sup>)

**(v) Zikri chit:**—It is a request to a certain person residing in the town at which a hundi is addressed or made payable by the drawer of a hundi to accept it for honour in case it is dishonoured by the drawee. This is meant for the protection of the holder of the hundi. It is in the form of a letter given by the drawer or any other prior party to the holder. This form of hundi is prevalent all over the country in connection with the Marwari hundis and, according to a custom among the Marwari Shroffs, it requires no noting or protest.

**(vi) Darshani Hundi:**—This is a hundi payable at sight. It is negotiable and the price of this is regulated by demand and supply. Sometimes it is sold at a premium and sometimes at a discount. It is a very common form of hundi prevalent in the market.

**(vii) Miadi Hundi:**—It is called Muddati hundi, that is, a hundi payable after a specified period of time. On the security of these hundis or promotes capitalists advance loans. It is the usual practice of the capitalists to deduct the interest in advance for the period up to the due date. It will be noticed that the

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(*p*<sup>2</sup>) Mc Pherson on Contracts 168

(*p*<sup>3</sup>) *Ibid* 166

various classes of hundis described above may be Miadi hundi only if the stipulation be to make the payment after a specified period

For specimens of different hundis, *vide* Appendix I

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand

### NOTES

The definition shews that the cheque is a bill of exchange drawn on a specified banker and payable on demand Unless restricted it is negotiable by endorsement and delivery While all cheques are bills of exchange, all bills of exchange are not cheques A cheque must conform to all the conditions laid down in the previous section relating to bills of exchange Although these two instruments have several things in common, they differ from one another in many respects

**Cheque and Bill of Exchange:**—A banker's cheque is a peculiar sort of instrument, in many respects resembling a bill of exchange, but in some, entirely different A cheque does not require acceptance, in the ordinary course it is never accepted It is not intended for circulation; it is given for immediate payment, it is not entitled to days of grace, and though, strictly speaking, it is an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons it is not so considered It is more like an appropriation of what is stated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor the person giving the cheque must be considered as the person who orders his debts to be paid at a particular place, primarily liable to pay, and as being much in the position of the maker of a promissory note, or the acceptor of a bill of exchange payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place (*p*<sup>4</sup>)

**Meaning of payment by cheque:**—Since the drawing up of a cheque upon a banker *prima facie* implies that the drawer has funds with the bank to operate upon, the payment by the bank necessarily implies that the payment has been made out of the deposit (*p*<sup>5</sup>)

(*p*<sup>4</sup>) *Ram v Luchme*, 9 Moore, PC 46, 74, *Bank of Barada v P.N. Bank*, 1944 PC 58 48 CWN 810 71 IA 124

(*p*<sup>5</sup>) *Pott v Clegg*, (1847) 16 M & W 321

Payment by the bank of a cheque drawn in favour of a particular person is no evidence of payment to that person unless it is proved that the cheque has passed through the hands of the person in whose favour the cheque was drawn. In such cases it is desirable to cause the payee to write his name across the cheque (*p*<sup>6</sup>)

**To be retained:**—There is a practice of writing across the cheque the words 'to be retained'. The condition imported by these words applies only between the drawer and the payee and has no reference to the banker order on whom is absolutely unconditional (*p*<sup>7</sup>)

**Post-dated cheque:**—A cheque is a bill of exchange drawn in a special manner and as a bill of exchange it is negotiable (*p*<sup>8</sup>). Although there is no provision in the Act specifically allowing post dated cheques like Sec 13 (2) of the English Bill of Exchange Act of 1882 there is nothing forbidding them, and paragraph 2 of Sec 5 of this Act contemplates the making of a bill of exchange payable at a future date (*p*<sup>9</sup>). The mere fact that the date of payment of the cheque is postponed to a future date does not make the cheque payable otherwise than on demand. It is payable on demand after the due date. Consequently, a holder in due course of a cheque without any notice of any defects is entitled to payment from the drawer (*p*<sup>10</sup>)

**Date of a cheque:**—A cheque is a bill of exchange subject to two qualifications, e.g., (i) it shall be drawn on a specified banker and not on a Govt Treasury which is not a bank (*q*), and (ii) it shall be payable on demand without any days of grace (*r*). Demand must be from the date the cheque contains and not necessarily from the day of issue, so that post-dated cheques cannot be presented before the date, the cheque bears, which is taken to be the date of issue. A cheque bearing a date which falls on a Sunday is not bad. A post-dated cheque is admissible in evidence although it bears a stamp for duty payable in respect of a bill of exchange, and after the due date, may be sued upon as a cheque (*s*)

(*p*<sup>6</sup>) *Egg v Barnett*, (1800) 3 Esp 196

(*p*<sup>7</sup>) *Roberts v Marsh*, (1915) 1 K B 42

(*p*<sup>8</sup>) *Partab v Gilbert*, 1934 All 695, 1934 A L J 892, 151 I C 287

(*p*<sup>9</sup>) *Bank of Baroda v Punjab N Bank*, 1944 (P C) 58; 71 I A 124 48 CWN 810, (1944) 2 M L J 257, 71 I A 124 (P C)

(*p*<sup>10</sup>) *Partab v Gilbert*, 1934 All 695, 1934 A L J 892, 151 I C 287

(*q*) *Ramgami v Sanraralingam*, 43 Mad 816

(*r*) *Ram v Hardeo*, 50 All 309, *M'Lean v Clydesdale Banking Corporation*, (1883) 9 A C 95

(*s*) *Walter v Tenant*, 52 Cal 677, 1925 Cal 1007, 90 I C 59; *Nauaya v Palani*, 1926 Mad 1264, *Maman v Mahamad*, 16 Cal 432

A cheque which is a payment order can always be revoked by the issue of another order upon the bank to stop payment and it can also be revoked by notice of the death or bankruptcy of the customer (*t*)

**Acceptance of cheque:**—As already noticed in the case of a cheque acceptance is not necessary to create a liability to pay as between the drawer and the drawee bank. The liability depends on the contractual relationship between them. If the customer has sufficient fund or credit available with the bank the latter is bound either to pay the cheque or dishonour it at once. But if the bank (at least at the drawer's request) accepts the cheque, he should be entitled to protect himself as against his customer by setting aside the appropriate funds standing to the customer's credit (*t*<sup>1</sup>)

**Marking or certification of cheque:**—The practice of certifying cheques is not judicially or legislatively established in India. Marking or certification of a cheque is not an acceptance. It is essentially different in its nature and effect in the absence of a customer treating certification as an acceptance. There is a practice amongst bankers for marking cheques as good for payment for the purpose of clearance by which they become bound to each other. This is entirely different from acceptance, the effect of which is to create a negotiable liability. Wherever such practice of marking prevails as it does in Calcutta under the Rule 22 of the Calcutta Clearing Banks Association, the practice seems to be simply that after clearing hours a cheque presented for clearing may be marked and will then be paid on the next day when clearing business is resumed. The marking bank is by judicially established custom bound to pay it to the other bank. But this marking or certification cannot be identified with acceptance (*t*<sup>2</sup>). That cheques once marked by the bank on whom they are drawn are presumed to be in order and they are honoured as a matter of course irrespective of the question of fund or defect in the instrument (*t*<sup>3</sup>) appears to have been too broadly stated. In order to see whether a certification of a cheque is by the banker, the certification must be construed according to the meaning of the words used in their setting and independently of the doctrine of negotiability. The question is whether the words appearing on a cheque import a promise by the

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(*t*) *Lalla Mal v Keshodas*, 1 A L J 254, 1904 A W N 10, 26 All 493.

(*t*<sup>1</sup>) *Bank of Baroda v P N Bank*, 1944 P C 58, 48 C W N 810, (1944) 2 M L J 275, 71 I A 124 (P C)

(*t*<sup>2</sup>) *Ibid*

(*t*<sup>3</sup>) 1903 A C 49

certifying bank to pay the amount of the cheque whether or not there are funds to it, and if they do, whether there is any privity of contract between the holder and the certifying bank and if there is whether there is consideration for the promise as between these parties. The words of the certification may be construed as words of representation as to the genuineness of the cheque and of the signature. In case of a cheque which is due for payment at the time of certification it may include a representation as to the sufficiency of the drawer's account at the time. But in case of a post-dated cheque i.e. a cheque not due for payment at the time but some days later a representation as to the position of the fund will not go very far. If it is to be construed as a representation that on the date the cheque will be due there will be funds available it necessarily amounts to a promise and if on that date the requisite fund is not available want of consideration will be fatal to the enforceability of the promise. The promise, if any, is a non-negotiable promise without consideration. A gentleman's agreement or honourable obligation, however important in business, has no validity from the legal point of view (t<sup>4</sup>)

7. The maker of a bill of exchange or cheque is called the "drawer," the person thereby directed to pay is called the "drawee"

Drawer, Drawee

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need"

"Drawee in case of need"

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor"

"Acceptor"

When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it *supra protest* for honour of the drawer or of

"Acceptor for honour"

(t<sup>4</sup>) *Bank of Baroda v P N Bank*, 1944 PC 58, 48 CWN 810, (1944) 2 MLJ 275, 71 IA 124 (PC)

any one of the indorsers, such person is called an "acceptor for honour"

The person named in the instrument, to whom or  
 "Payee" to whose order the money is by the  
 instrument directed to be paid,  
 is called the "payee"

### NOTES

As already stated, there are three parties to a bill of exchange, *e g*

(I) the person who draws the bill *i e*. the maker of the bill,

(II) the person who is directed to make the payment *i e* the drawee,

(III) the person to whom the payment is to be made *i e* the payee

These three sets of persons who are defined in this section are called the drawer, the drawee and the payee. Of these three, the drawee is called the acceptor when he signs his assent upon the bill *i e* when he accepts the liability of payment under the bill

**Drawer:**—When a person after drawing a bill delivers it to the payee the former incurs a liability to the latter. Therefore, ordinarily, a person who is competent to enter into a contract draws a bill. But there is nothing to prevent a person, incompetent to contract, from drawing a bill—only in such cases the drawer incurs no legal responsibility as no obligation can be enforced against him legally. As a manager is not a mere agent, other members are liable on a negotiable instrument drawn by him (*u*)

**Drawee:**—Drawee is generally a person who is under some obligation to the drawer, either by having in his possession funds of the drawer, or for some other reason, to make the payment as directed by the drawer. And the moment he formally accepts the bill or the cheque *i e* he signifies his assent to the order of the drawer, he is called the acceptor and makes himself liable for the payment. It follows, therefore, that he should be a person competent to a contract free from all legal disabilities (*v*). The drawee is not bound to accept even when he has funds of the drawer which he is bound to pay. But a bank is bound to accept a cheque when the drawer's

(*u*) *Krishnanand Nath v Raja Ram Singh*, 1922 AM 116, 20 ALJ 233  
 (*v*) Section 26 post



funds are there (Vide Section 31 post) When there are several drawees all or some of them can accept A stranger can accept only for honour (*w*) Acceptance may be made after notice of drawer's death but not of his insolvency. When an instrument is in the name of the manager, the other members do not become co-promisees (*x*).

**Valid acceptance:**—Apart from any mercantile usage there cannot be an oral acceptance of a hundi An acceptance, in order to be valid, must be in writing signed by the acceptor on the bill delivered to the holder (*x*<sup>1</sup>) In the absence of the above elements the acceptance will not be valid

**Must be in writing:**—An acceptance must be in writing (*y*) and an oral acceptance of a bill does not make the so-called acceptor liable to the holder of the bill (*x*) But there is no actual form of "acceptance" prescribed Any word that goes to signify the assent of the drawee is sufficient At times only the signature signifies such assent Mere writing of figures on the hundi cannot amount to the signing of assent unless it can be proved to be so according to the mercantile usage of the locality (*z*<sup>1</sup>) The ordinary rule that acceptance must be in writing is liable to one exception, that is, where by a local custom hundis may be accepted verbally But such custom must be specifically set up and proved (*a*). Unless qualified, the acceptance is general

**Signed by acceptor:**—The acceptor must sign his assent (*b*) Signature is essential As stated in the previous paragraph, mere writing of the figure does not necessarily amount to signing (*c*) A man trading in a name other than his own may accept in either name When a bill is addressed personally to one who is also a partner in a firm and he accepts it in the name of the firm, it is nevertheless not the firm's acceptance, but his own Similarly, when a bill is addressed to a firm, and the partner accepts the bill in the name of the firm,

(*w*) *Jagannath v Heop & Co.*, 71 P.R. 1909; 110 P.W.R. 1909; 2 I.C. 804.

(*x*) *Anklamma v B Chuchyya*, 41 Mad. 637, 34 M.L.J. 315, 45 I.C. 419

(*x*<sup>1</sup>) *Surajmal v Kasiprasad*, 1933 Nag. 389, 144 I.C. 914

(*y*) *Pannalal v Hargobind*, 51 I.C. 250; 29 P.R. 1919

(*z*) *Gurudas v Khemchand*, 1930 Lah. 471, 31, 127 I.C. 214, on appeal 1932 Lah. 274, 13 Lah. 137 I.C. 387; *Suraj v Kashi*, 1933 Nag. 389, 144 I.C. 914

(*z*<sup>1</sup>) *Ibid*

(*a*) *Dwarkanadas v Giridhar*, 1924 All. 129, 74 I.C. 692; *Pannalal v Hargopal*, 1 Lah. 80, 55 I.C. 931, 94 P.H.R. 1920

(*b*) *Ardesher v Khosachand*, 32 Bom. 247; 10 Bom.L.R. 268

(*c*) *Gurudas v Khemchand*, 1930 Lah. 471, 127 I.C. 214, on appeal 1932 Lah. 274, 137 I.C. 873, 13 Lah. 31; *Suraj v Kashi*, 1933 Nag. 389, 144 I.C. 918

adding his own name, the acceptance is that of the firm and not of the partner. A bill addressed to a firm and accepted by one member of the firm in his own name is an acceptance by that member of the firm and not by the firm itself. An acceptance in its true style by a firm wrongly addressed is a valid acceptance (*c*<sup>1</sup>).

Where a bill is accepted by an agent of the drawee, instead of by the drawee himself, the acceptance is good. The hand that holds the pen is immaterial if, in fact, there be authority to sign. Where a bill is addressed to an agent, and the agent accepts, the principal is not bound even though the agent had authority to accept bills (*c*<sup>2</sup>).

**On the bill:**—The assent and the signature must be written on the bill on either side of it (*d*). It cannot be done on a copy which is not a part of the bill nor on any other paper (*e*). It is advisable to write acceptance on one portion as, otherwise, the acceptor runs the risk of making himself liable to all in whose hands the different portions may fall.

**Delivery:**—Until delivered to the holder the acceptor incurs no obligation to make the payment. When notice of acceptance has been given to the holder, or the delivery of the instrument, after acceptance, has been made, the drawee is bound to make the payment to the payee.

**Payee:**—The person who is the real beneficiary under the bill i.e. to whom the payment is to be made is called the payee. Where the payee signs his name and makes it payable to some other person, that other person does not become the payee (*f*). Person includes a corporation and, therefore, a corporation may be a payee (*g*). A community may also be the payee of a note (*h*). A minor may be a payee. If the payee is a fictitious person a bona fide holder may recover as upon a note payable to bearer (*i*).

(*c*<sup>1</sup>) Halsbury Vol 11 P 485

(*c*<sup>2</sup>) *Ibid*

(*d*) *Ardeshr v Khosachand*, 32 Bom 247, 10 Bom LR 268

(*e*) *Gurudas v Khemchand*, 13 Lah 31, 1932 Lah 274; 137 IC 873; *Pannalal v Hargopal*, 1 Lah 80, 94 PLR 1920, 55 IC 931

(*f*) *Jugwandas v The Nagpur Central Bank Ltd*, 1926 Bom 262, 50 Bom. 118; 28 Bom. LR 226, 93 IC 619

(*g*) *Damodandas v Benares Bank Ltd*, 5 Pat LJ 536, 58 IC 265

(*h*) *Subramania v Chokkalingham*, 72 IC 95, 44 MLJ 240, 1923 Mad 434.

(*i*) Comp Sec. 7 (3) Bill of Exchange Act.

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction

### NOTES

The term "holder" as defined in this section appreciably differs from that of the English law. Under the provisions of the English Bills of Exchange Act the holder of a bill is a person who is actually in possession of it. The English law recognises only the *de facto* holder. But under the present section the legislature, by inserting the words "entitled in his own name to the possession thereof," goes much further and lays down that one who is entitled to, but may not actually be in, possession of a note is the holder thereof. In other words, this section recognises *de jure* holders while the English law does not. But the term, as defined in this section, is not limited to a *de jure* holder, as an endorsee of a note, to whom the endorsement has been legally made and delivery of the note has been given, has been held to be the holder thereof (*j*)

**Entitled in his own name:**—The words 'in his own name' do not and cannot mean the personal name of the person and there is no reason that any alias or assumed trade name would not fall within the meaning of these words (*j*<sup>1</sup>). The coparcenary can be described as the holder of a note if it is made in its collective or business name and therefore in its own name within the meaning of his section (*j*<sup>2</sup>). But a mere surviving coparcener of the holder is not a holder if there is no endorsement in his favour (*j*<sup>3</sup>). Where a note is executed in the name of the managing agents of a bank it is the bank that is the holder of the note and not the managing agents (*j*<sup>4</sup>). Of a note executed in favour of a joint family firm the members compris-

(*j*) *Sarat v Kedar*, 2 CWN 286

(*j*<sup>1</sup>) *Zuiya Pascol v. Man Mohan Das*, 1940 Bom 164, 42 Bom.L.R. 248, I.L.R. (1940) Bom 153, 188 I.C. 618; *Sayeed v. Mahammad*, 1961 Hy 79

(*j*<sup>2</sup>) *Ibid*

(*j*<sup>3</sup>) *Sumarmal v Sumar Hay*, 1933 Sind 144; 182 I.C. 896.

(*j*<sup>4</sup>) *Hemnahni v. Nishith*, 1939 Cal 256; 181 I.C. 1004; 68 C.L.J. 405

ing the firm at the time of execution are the holders (*j*<sup>5</sup>) A receiver appointed, in a partition suit, by Court and authorised to sue is a holder, within the meaning of the section, of a pronote executed in favour of the firm under partition (*j*<sup>6</sup>)

**Benamdar:**—In view of the prevalence of benami transactions in the country it is well to consider the position of the benamdar in the light of the wording of the present definition A benamdar is a person who has no real interest in the property But the use of the words “entitled in his own name to the possession thereof” goes to shew that the benamdar in whose name the document stands as the payee is the holder thereof and not the real beneficiary whose name does not appear therein (*k*) This section has been so worded to prevent the possibility of the real beneficial owner preferring a claim on the ground that the ostensible holder is a mere benamdar (*l*) It, therefore, follows as a necessary corollary that no person whose name does not appear on the negotiable instrument itself as the payee, or who is neither the endorsee nor the bearer can sue on the same (*m*), that is to say, in the case of a *benami* pronote it is only the benamdar who can sue on the note and not the beneficial owner (*n*) Therefore, a son lending his father’s money and obtaining a pronote in his name is alone entitled to sue on the instrument (*o*) No one can maintain a suit on a pronote except the holder thereof The fact that the holder has been made a party and he has admitted that he is benamdar makes no difference and no decree can be passed in his favour (*p*) It is, however, possible that the suit can be proceeded with if it is based on the original consideration and not on the note (*q*) But it has been held by the Patna High Court and a division Bench of the Calcutta High Court that there is no reason why the real owner should not successfully institute a suit on a pronote executed in the name

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- (*j*<sup>5</sup>) *Francis v Vadilal*, 1939 Bom 147, 41 Bom L.R. 269, 181 IC 808
  - (*j*<sup>6</sup>) *Kali Charan v Mahammad*, 41 CWN 697
  - (*k*) *Vishnu v Achut*, 1928 Nag 54, 105 IC 780, *Ashu v Protiva*, 43 CWN 399, *Raghu v Ram*, 1939 PWN 178
  - (*l*) *Suba v Ramasami*, 30 Mad 88 (FB), 16 MLJ 508, *Madan v Lalchand*, 49 All 457, 1927 All 463
  - (*m*) *Ibid*, *Ramanuja v Sadagopa*, 28 Mad 205, *Bando v Jambu*, 12 Bom L.R. 801, *Somu v Sanyasayya*, 1934 Mad 392
  - (*n*) *Reotilal v Mannakunwar*, 1922 All 70, 44 All 290, 65 IC 785; *Har Kishore v Guru Mia*, 35 CWN 53, 58 Cal 752, 53 CLJ 37, 1931 Cal 387, *Sarjoo v Rampeary*, 1950 Pat 493
  - (*o*) *Ma Nyr Ma v Maung Sen*, 57 IC 881
  - (*p*) *Har Kishore v Guru Mia*, 58 Cal 752, 35 CWN 53, 53 CLJ 37, 1931 Cal 387, *Peary v Goury*, 1934 Pat 382
  - (*q*) *Ibid*.

of his benamdar if the latter admits that he is the benamdar (r) In a suit upon a pronote, court should not allow evidence to shew that the pronote was not really executed in plaintiff's favour or that the note has been discharged by payment to the real owner (s) But it can be shewn that the name of a wrong payee was inserted by mistake or that the payee is another man of identical name (t) When, however, a negotiable instrument has been executed in the name of an agent for a disclosed principal the latter can sue on the instrument without any indorsement in his favour (u) When a pronote is executed in the name of one member of a joint family and the other members are interested in it, the person in whose name the note stands is entitled to sue (v)

A Karnavan of a farward is not entitled to sue for money on a pronote executed in favour of a deceased female member on the ground that the money advanced was his unless he brings the suit as the representative of the deceased (w) A maker cannot successfully allege that the person in whose name the instrument stands or is endorsed is a benamdar and not entitled to the amount (x) A pronote stands in the name of a member of a joint family who died leaving a widow The note was taken for the joint interest of all the members of the family Even there it was the widow alone who was competent to sue (y) No plea of benami will be entertained But a real owner is not debarred from suing for a declaration that he is the real payee and claiming delivery of the note from the payee named in the note (z)

An endorsement of a bill for collection does not, as between the endorser and the endorsee, pass the property in the bill to the endorsee, though it puts him in possession to make title for a subsequent holder in due course An endorsee for collection, after returning the bill to the endorser without re-endorsement, does not come without the definition of a holder to entitle him

- (r) *Surjag v Deosaram*, 1930 Pat 319, 123 I C 395; *Brojajal v. Budhnath*, 55 Cal 551, 1928 Cal. 148, 105 I C 149.
- (s) *Madan v Lalchand*, 1927 All 463, 49A, 457, 100 I C 703; *Bojjamma v Venkata*, 21M 30
- (t) *Abdul Hakim v Ebrahim*, 1921 Cal 480, 62 I C. 210
- (u) *Subramania Iyer v Sultan*, 1925M 1130, 90 I C 1047
- (v) *Bando v Jambu*, 12 Bom LR 801, 7 I C 986
- (w) *Chanithruthi v Veetil*, 8 MLT 85, 1910 N.W.N. 211
- (x) 15 N L J 45
- (y) *Gopal v Venkata Krishna*, 26 M L J 224, 23 I.C. 612; See *Suraj v. Ram*, 1950 A L J 610, 1950 A W R 606.
- (z) *Kommuru v Korella*, 1934 M W N 1321

to sue (a) A transferee of a promissory note by way of assignment by a deed is a holder to entitle him to sue. But such a holder is subject to all equities while a holder by endorsement and delivery is not (b). Therefore, a person to whom a promissory note is handed over without a deed or endorsement is not entitled to sue on it (c). But it has been held in an Allahabad case that a holder under this section is a person to whom there has been negotiation by endorsement and delivery where the note is payable to order and not a person who has merely acquired rights under a sale deed (d).

**Joint Holders:**—Where in a bill there are several payees or endorsees, all of them are joint holders and none of them can alone negotiate or sue on it. All of them must join together to negotiate the instrument or sue on it under section 45 of the Indian Contract Act. If one of them be dead all the legal representatives of the deceased must join with the surviving payee or endorsee to negotiate the instrument or sue on it (e). All the members of a joint family are holders of a note in the name of the joint family firm (e<sup>1</sup>).

**Blank Endorsement:**—It is difficult to state who is the holder where a note payable to order is endorsed in blank or where a note is payable to bearer and the name of the endorsee or payee does not appear on the face of the instrument. In such cases the person to whom the instrument has been delivered for negotiation must be deemed to be the holder, he being the person in actual possession. The person to whom an instrument is transferred by operation of law is the holder and entitled to recover the amount by suit (f).

**Lost Note:**—Under the last paragraph of this section when a note is lost or stolen the last holder continues to remain the holder in spite of the loss or theft. The passing of the custody to other hands does not affect the position. Thus, a note belonging to X is lost and Y finds it. Y forges X's

- (a) *Jamison v Scott*, 36 Cal 291, 1 IC 972, *Samul v Shushila*, 12 CWN 1102, *Subramaniam v Alagappa*, 30 Mad 441; 17 MLJ 414, *Punnayya v Palaniappa*, 5 IC 435, 7 MLT 271.
- (b) *Surath v Narayan*, 1934 Cal 549, 38 CWN 465, 61 Cal 549; 150 IC 925, *Mathur v Kadir*; 28 Mad 544.
- (c) *Ibid*, *Akhoy v Haridas*, 18 CWN 494.
- (d) *Jung Bahadur v Chunder Bah*, 1939 All 279, ILR (1939) All 419, 181 IC 897.
- (e) *Kandhaya v Chandur*, 7 All 313, 1885 AWN 34 (FB).
- (e<sup>1</sup>) *Francis v Vadilal*, 1939 Bom. 147, 181 IC 808.
- (f) *Lodd Govinda v Munasami*, 9 MLT 169, 8 IC 88, *Lodd Govinda v Munnapp*, 31 Mad 534, 4 MLT 341, *Ramanathan v Kathavelon*, 41 Mad 353.

signature and passes it to Z who pays good value for it Y having no title himself can pass no title to the endorsee Z Besides, negotiation by forgery stands in the way of passing any title to Z in spite of his payment of consideration and even if without knowledge of the loss or forgery (g) Section 9 that follows only cures a defect of title but cannot create title where none exists

9. "Holder in due course" means any person who for consideration became the "Holder in due course" possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title

### NOTES

The words 'payable to order' were substituted for the words 'payable to, or to the order of, a payee' by section 2 of the N I Amendment Act VIII of 1912

In plain language a "holder in due course" means a bona fide holder of an instrument for value before it has become due without notice of any defect To facilitate negotiability and to safeguard the interests of persons in whose favour an instrument is negotiated, under certain important conditions, this definition is given The definition lays down three conditions —(I) The transfer must be for consideration (II) It must be before it is due (III) It must be without notice of any defect

**Consideration:**—Consideration means, here, valuable consideration as contemplated in the Indian Contract Act It means some gain or benefit to the party making the promise and corresponding loss or injury to the party to whom it is made It consists of some act or forbearance of the promisee or of some third person A promote executed in consideration of one's father's past debt (h), or a promote executed by A in favour of B in consideration of C forbearing to sue A for a former promote executed by A to

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(g) *Bank of Bengal v Mendes*, 5 Cal 664

(h) *Samuel v Anantha*, 6 Mad 351

C (1), is for good consideration. A promissory note executed after attainment of majority for services rendered to the defendant during his minority is for valuable consideration (j), but not where the maker executed a promote as a mere name lender for a person whose name was not intended to be disclosed in the document (k), nor where a note is executed for security for money to be advanced which is, in fact, not afterwards advanced (l). Moral obligation is not valuable consideration. To give up a thing which one is already bound to give (m), or to relinquish a void instrument, or to acknowledge a non-existent debt, or a debt in respect of which the promisor has obtained his discharge from the Insolvency court, is not valuable consideration (n) to make the holder, a holder in due course. While the consideration must be valuable it need not be adequate (o), although adequacy will help to establish 'bona fide'. The consideration should be a lawful consideration and should not be forbidden by law nor should defeat the provisions of any law nor should it be fraudulent, immoral or opposed to public policy as laid down in the Indian Contract Act (p). A pledgee or one who has a lien upon a negotiable instrument is deemed to be a holder for value to the extent of his dues (q). Pledgee must not part with the instrument and, if he can, must collect it at maturity (r). A G P Note belonging to a certain person is endorsed in blank in favour of a bank as security for the loan from the bank. The bank is not merely the pledgee but is also a holder for value to the extent of the lien. Delivery of the bond after endorsement passes not merely the equitable title (s). A donee of a negotiable instrument succeeds only to the rights of the

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- (1) *Abida v Ramchandran*, 1923 Oudh 176, *Farindra v Kachaman*, 45 Cal 774, *Nanjunda Sami v Kanakraju*, 36 MLJ 242, *Srinivasa v Ranga*, 36 MLJ 618
- (j) *Prabhu v Sambhu*, 54 IC 436, 20 PLR 1920, *Smdha v Abraham*, 20 Bom 755, *Ramratan v Basanta*, 64 IC 121, 2 Lah 263, *Kundan Bibi v Srinarayan*, 11 CWN 135. But see 16 MLJ 422, 9 MLT 17
- (k) *Sesha Ayer v Mangal*, 5 IC 757, 20 MLJ 144; 7 MLT 85
- (l) *Suppan v Sadya*, 1927 Mad 1146, 99 IC 753
- (m) *Nambiar v Sundara*, 14 IC 813, 5 Bur LT 47
- (n) *Naoraji v Kazi Siddik*, 20 Bom 636
- (o) *Administrator General v Juggeswar*, 3 Cal 192 (PC) 7 BLR 289
- (p) Indian Contract Act, sections 10 and 23
- (q) *Muthukushna v Vraraghava*, 38 Mad 297, 25 MLJ 236, 21 IC 316, 1913 MWN 839. See also *Mulraj v Biswanath*, 37 Bom 198 (PC)
- (r) *Ibid.*
- (s) *Osmond Bibi v Khutish*, 41 Cal 771; 18 CWN 531, 26 IC 284



donor and is not a holder for value as there is no valuable consideration for the transfer in his favour. He, however, acquires all the rights of a holder in due course if his donor himself was a holder in due course but he cannot maintain a suit against the donor (*t*), but can successfully sue the prior parties. He can negotiate the instrument for value to a third party who becomes a holder in due course. Endorsee of a cheque is a holder in due course (*u*). Where, in a partition, a pronote is allotted to a person who never comes in possession of it and the note is payable to a third person and not to bearer, the former cannot be a holder in due course (*v*).

**Consideration can operate only once:**—A consideration can operate, as such, only once and the same consideration cannot support more than one promise (*w*). Thus, a pronote executed by a person on attainment of majority in consideration of money advanced on a prior note executed by him while a minor, and thus void, was without consideration (*x*). A different view has been held by the Calcutta High Court (*y*). The latter view, it is submitted, appears to be the more reasonable for there is no bar in law which precludes a person from paying a debt incurred during his minority after he attains majority. Therefore, a note executed by a person on attainment of majority in consideration of a debt incurred during his minority is a good and valid instrument (*z*).

**Burden of proof:**—The holder starts with a presumption in his favour that he is a holder for value, for every negotiable instrument shall be presumed to have been executed or endorsed for valid and sufficient consideration. Therefore, the production of a negotiable note makes a *prima facie* case (*a*). In a suit by a holder in due course it is not permissible to go outside the note. A holder in due course cannot be expected to make enquiries concerning a previous promissory note referred to in the body of the document and the principal and interest of which are mentioned as consideration of the present note (*a*<sup>1</sup>). An endorsee from the payee of a

(*t*) *In re, Whitaker*, (1889) 42 ChD 119

(*u*) *Kishen Prosad v Sasstram Lime Ltd*, 1924 Pat 521, 80 IC 572.

(*v*) *Narayana Moorthi v Umamaheswaram*, 1930 Mad 197; 122 IC 345

(*w*) *Anglo Indian Trading Co., v G P Brierly*, 8 IC 302, 9 MLT 17.

(*x*) *Nambiar v Sundara Bai*, 16 MLJ 422, 14 IC 813

(*y*) *Kundan Bibi v Sri Narayan*, 11 CWN 135

(*z*) *Ibid*, *Sindha Shri v Abraham*, 20 Bom 755, *Prabhdial v Sambhu Nath*, 54 IC 436, *Pheru Ram v Basant Rao*, 64 IC 121

(*a*) *Nambiar v Sundara Bai*, 16 MLJ 422; 14 IC 813

(*a*<sup>1</sup>) *Madhava v Vankunta*, 1942 Mad. 468, 201 IC 607

hundi must be presumed, until the contrary is proved, to have been a holder in due course, that is to say, a holder for consideration (b) In a suit based on a negotiable instrument, therefore, the onus to prove want or failure of consideration lies on the defendant. The onus is shifted to the plaintiff if the instrument is proved to have been obtained from the real owner by fraud, etc (c) The presumption does not apply to non-negotiable instruments

**Before payable:**—Sections 22 to 25 of the Act lay down when an instrument becomes payable. In order to be a holder in due course a person must take possession of the instrument before it becomes payable (d). If the endorsement is made before but the instrument is delivered after it becomes due, the holder is not a holder in due course. When an instrument becomes overdue and still continues in circulation it raises a suspicion that payment has not been made because of some defect either in the transaction or in the title of the holder. A transferee of an overdue instrument starts with the presumption of knowledge of the defects, if any. Therefore, to derive all the advantages of a holder in due course the holder must have possession of the instrument before it becomes payable. A person taking a stale cheque is put on sufficient notice that payment was overdue and if the transferor was not a holder in due course, as claiming under a fictitious endorsement, the transferee cannot have better rights (e). A person who takes a negotiable instrument evidencing a transaction which excites the suspicion that there is something wrong in the transaction does not act in good faith if he shuts his eyes to the facts presented to him and is, therefore, not a holder in due course (f). Where there is nothing to shew that payment of a promissory note was demanded or that it was overdue before it was endorsed over, it must be taken that the endorsement was made before the promissory note became payable (g). A transferee on the due date is a holder in due course. A transferee after demand of an on-demand promissory note without knowledge of the demand is a holder in due course (g<sup>1</sup>). In the absence of an actual demand a note payable on demand is not

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(b) 16 Bom LR 743, *Chokalingam v Subrahmanya*, 1940 Rang 170; 189 IC 715

(c) Sec 118, *post* and notes thereunder

(d) 1928 MWN 680

(e) *Ram Sarup v Hardeo Prasad*, 50 All 309

(f) *Green v Balon*, 12 BurLT 16, 51 IC 537

(g) *Sivaram v Moideen*, 3 Mad 34, 19 MLT 509, 3 IC 428, *Bala*  
*Mal v Abdul Rahim*, 1923 Lah. 638

(g<sup>1</sup>) *Demgermull v Sambhu*, 1951 Cal 55

deemed to be overdue by reason merely that a reasonable time has elapsed since its issue (*h*)

**Without notice of defect:**—According to section 58 of the Act the title of a person who negotiates a note is defective if he has obtained it from the maker or holder thereof by means of an offence or fraud, unlawful means or for an unlawful consideration. A holder, in due course, must acquire the instrument without having any sufficient cause to believe that there is any defect in the title of the person from whom he obtains the instrument (*i*). Notice may either be actual or constructive, when a person takes a promote with the knowledge that the consideration for the promote failed and that the payee had no title to negotiate it, he is said to have actual notice of the defect and is, therefore, not a holder in due course (*j*). Similarly when an endorsee takes a note with knowledge of a prohibitory order of the court against transfer he is not a holder in due course (*k*). Where there are circumstances patent on the face of the instrument to create suspicion, they are sufficient in law to impute notice of defects to the transferee who is said to have constructive notice of the defects (*l*). An erasure or a material part or pasting together of a torn note may be cited as an illustration of suspicious circumstances patent on the face of the instrument. When it is *prima facie* clear that the endorsee either had knowledge of, or could know the actual state of affairs, the presumption in his favour is rebutted. Thus, where a book maker gets a cheque, which had been given in a betting transaction, endorsed in his favour, and it is found that he had transactions for a long time with the endorser, the presumption in his favour as a holder in due course is rebutted (*m*). The doctrine of "notice to the agent is notice to the principal" will not apply when the agent is himself a party to the fraud practised on the principal or when it is to his interest not to disclose the fact to the principal (*n*).

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- (*h*) *D N Saha v Bengal National Bank*, 47 Cal 861, 33 CLJ 541, 1921 Cal 302, 60 IC 940, *Shahabuddin v Tota Venkatar*, 1938 Mad 911, 182 IC 966
- (*i*) *Kishan Prosad v Sassaram Lime Ltd*, 1924 Pat 521 80 IC 572
- (*j*) *Muthiah v Kasivasi*, 10 MLT 79
- (*k*) *Subramania v Chokalinga*, 1923 Mad 317, 46 Mad 415, 44 MLJ 206, 72 IC 189, *Namagiri v Muthu*, 56 MLJ 70, 1928 Mad 940, 1928 MWN 466, 28 LW 565, 111 IC 887.
- (*l*) *Green v Balon*, 12 Bur LJ 16, 51 IC 537
- (*m*) 1 Bur LJ 40
- (*n*) *Texas Co v Bombay Banking Co.*, 44 Bom. 139; 24 C.W.N 469, 30 CLJ 446, 22 Bom LR 429, 26 MLT 370; 1920 MWN 70, 11 LW 320, 54 IC 121

Defect of title in this section means defect of title of his immediate transferor and not that of any other holder before his transferor (*o*) unless, of course, the transferee was himself a party to the fraud or what caused the defect

**Effect of negligence:**—A transferee of a bill should be diligent and not negligent or careless. Negligence, though honest and without bad faith, may be a sufficient cause for the belief in the existence of some defect in the title. Before the passing of this Act mere negligence was not held to charge the party, taking the instrument, with any defective title of the transferor (*p*), or to disentitle a party, in the absence of suspicious circumstances, to be a holder in due course (*q*). But the provisions of the present Act are stricter. Mere negligence by itself will not matter, but, to disqualify a person from being a holder in due course, bad faith will be inferred from negligence to enquire, if there are suspicious circumstances (*r*).

**Holder under forged endorsement:**—There is a distinction between a holder with defective title and a holder without title. To the latter class falls a holder under a forged endorsement who may be a holder for value in good faith and before maturity. He is not a holder in due course as no person can claim title to a negotiable instrument through a forged endorsement. Such an endorsement is a nullity and no endorsement at all, and, therefore, the transferee under such endorsement is not entitled to recover (*s*). Similarly, when a guardian endorses a promote without any indication that he has endorsed it in his capacity as a guardian the endorsement passes no title to the endorsee (*t*).

**Rights of Assignees.**—Where the payee of a promissory note executed by two persons agrees to hold one of them alone liable and relinquishes his claim against the other, the assignee who takes the note with the knowledge of this agreement acquires no better title than what the assignor had and is not entitled to a decree against the person released from liability by the assignor (*t*<sup>1</sup>). But where the maker of a promissory note

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(*o*) *Kurandalianmal v Konhikanam*, 1930 Mad 141

(*p*) *Bank of Bengal v Fagan*, 5 MIA 27, 38

(*q*) *Raghoji v Narandas*, 8 Bom LR 921

(*r*) *Raghoji v Narandas*, 8 Bom LR 921

(*s*) *Hansaraj v Tatoni*, 24 Bom 65, *Jamaram v Mahbule*, 82 IC 730; 3 ALJ 203, 28 All 428, *Govind v Mayodas*, 28 PLR 1884, *Banku v Secretary of State*, 36 Cal 239, 1 IC 929, *Mercantile Bank of India v D'Silva*, 52 Bom 810, 30 Bom LR 1210, 1928 Bom 436

(*t*) *Suppa v Kandaswami*, 1924 Mad 617, 19 MLW 560; 80 IC 567

(*t*<sup>1</sup>) *Talla Lingamurthi v Siddani*, 1938 Mad 599 177 IC 428

payable on demand has paid the amount to the payee before any demand and has not asked for the return of the note and the note is afterwards endorsed by the payee to a third person without knowledge of the fact of payment the endorsee is entitled to sue as a holder in due course the maker of the note (<sup>12</sup>)

**10. "Payment in due course"** means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned

### NOTES

In order to constitute a payment in due course the following conditions must be fulfilled *e g*

**(I) Payment must be in accordance with the apparent tenor of the document.**—that is to say, what appears on the face of the instrument to be the intention of the parties. Thus, when it is stipulated in the document that payment is to be made at or after maturity, payment before maturity, although it may discharge the obligations between the parties, will not be a payment in due course so as to discharge the instrument and make the parties free from any liability to the holder in due course

**(II) Payment must be made in good faith and without negligence.**—When there are suspicious circumstances and the payer fails to make any enquiry which may bring home the defects, the payment is not in due course. When a payment is made by a person with the knowledge that the note paid for is a stolen one and that the person receiving the payment is not entitled to receive the payment, or when a person makes a payment after receipt of an order stopping payment (*u*), or when a Shahjog hundi is paid without enquiry about the Shah (*v*), or when payment is made to a wrong person (*w*), it is not a payment in due course (See also notes under section 85)

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(<sup>12</sup>) *Nunna v Vuppuluri*, 1940 Mad. 631; 191 IC 40; ILR. 1940 Mad 382

(*u*) *Lalla Mal v Keshodas*, 26 All 493, 1 ALJ 254, 1904 A WN 100  
*Bhagwan Das v Creet*, 31 Cal 249.

(*v*) *Ganesh v Lachmi*, 18 Bom 570

(*w*) *Bank of Bengal v Mendes*, 5 Cal 654; *Lalla Prasad v Charles Campbell*, 9 C WN 841

**(III) Payment must be made to the person in possession of the instrument.**—This condition, however, admits of one exception. As explained before, if a note be stolen then payment to the possessor of the stolen note will not be payment in due course if the man making the payment has actual or constructive notice of this fact. When a note, payable to a particular person or order, is paid to another person in possession of the note without any endorsement of the person to whom it is payable, the payment is not a payment in due course. But if the person in possession proved that he was entitled to receive the payment it would be good payment under the circumstances ( $w^1$ ). Payment to a special endorsee ( $w^2$ ), or to the assignee of an insolvent, or the representative of a deceased holder, or to the managing member of a Hindu joint family ( $w^3$ ), is good.

**(IV) Payment must be made under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned there.**—This condition is closely allied to condition not (ii) mentioned before. There must be no suspicion either about the payee or the amount to be paid, nay, there must be no reasonable ground subsisting at the time of payment for believing that the payee is not entitled to receive payment of the amount mentioned in the instrument. There should be no suspicious circumstances about the payee or the amount payable. Payment to any person other than a payee or endorsee without enquiry as to whether he is entitled to receive payment on behalf of the last holder is not payment in due course ( $w^4$ ).

**Payment in Coins:**—The payment referred to in this section is payment of money only as the use of the word amount signifies. Money includes note which is a legal tender. The holder is not bound to accept payment in goods ( $w^5$ ), nor by a cheque ( $w^6$ ). If, however, a holder accepts a cheque and objects only to the amount he will not be allowed afterwards to question the nature of the tender by cheque ( $w^7$ ).

( $w^1$ ) *Raghunath v Radha Kisan*, 1929 Lah 634

( $w^2$ ) *Subramanian v Alagappa*, 30 Mad 441, *Ghalam v Ramadilla*, 1930 Lah 248

( $w^3$ ) *Violet v Banarasi*, 1864 WR 262

( $w^4$ ) *Lalta Prasad v Charles Campbell*, 9 CWN 841

( $w^5$ ) *Howard v Chapman*, (1831) 4 C and P 508

( $w^6$ ) *Bank of Scotland v Dominion Bank*, 1891 AC 592

( $w^7$ ) *Bolan Chand v Monland*, 4 Cal 572; *Debendra v Abdul*, 10 CLJ 150.

**11.** A promissory note, bill of exchange or  
 “Inland Instrument” cheque drawn or made in a State,  
 and made payable in, or drawn  
 upon any person resident in, a State shall be deemed to  
 be an inland instrument

### NOTES

Negotiable instruments may either be inland or foreign. This section defines the former and the next following section defines the latter. An inland bill is a bill which is, or upon the face of it, purports to be, both drawn and payable within a State or drawn within a State upon some person resident therein. Any other bill is a foreign bill. But unless the contrary appears on the face of the bill the holder may treat it as an inland bill (x). It has, however, been held in a certain case that a bill drawn upon a resident in British India is an inland bill wherever it may have been drawn—in or out of British India (y). According to this decision the first clause about the drawing of the bill becomes a surplusage without it is submitted, any warrant. The decision is in contravention of the plain language of the section.

The expression ‘a State’ is a substitute for ‘British India’ under the Adaptation of Laws Order, 1950. In Pakistan it will correspond to a province of Pakistan.

**12.** Any such instrument not so drawn, made  
 Foreign instrument or made payable shall be deemed  
 to be a foreign instrument

### NOTES

This section is supplementary to the previous section and from its wording it ought to have been added to the foregoing section instead of being separately numbered. In this section the words “not so drawn,” etc., must be read with reference to the previous section. A bill, drawn in England, made payable in France, is a foreign bill and notice of dishonour according to the French law is sufficient. The importance of what is an inland instrument and what is a foreign instrument arises only on the question of dishonour. No notice is necessary when an inland instrument is dishonoured. But in case of dishonour of a foreign

(x) Halsbury Laws of England Vol 11 p 475.

(y) *A G Kidstan & Co, v Seth Bros*, 57 Cal 730, 1930 Cal 692, 129 IC 190

bill notice, according to the law of the country where it is payable, is necessary

**13.** (1) A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer

*Explanation (i)*—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable

*Explanation (ii)*—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank

*Explanation (iii)*—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees

## NOTES

Subsection (1) was substituted by sec 3 of Act VII of 1919

This section enumerates the instruments which are negotiable and the conditions under which they become so. If the conditions laid down in the section are not satisfied they are not negotiable, *i.e.*, they cannot be made to pass from hand to hand by endorsement and delivery (*y*<sup>1</sup>), but nevertheless, they form the basis of enforceable contracts as between the original contracting parties

**Modes of transfer and effects thereof:**—Negotiable

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(*y*<sup>1</sup>) *Jhangaldas v Chetumal*, 1938 Sind 24, 173 I C 591



instruments can be transferred by delivery or endorsement or by both. They may also be transferred, like an ordinary chose in action, by assignment or sale under section 130 of the Transfer of Property Act by an instrument in writing with all the incidents of a transfer under that section (*y*<sup>2</sup>). Non negotiable instruments can be transferred under section 130 of the Transfer of Property Act by instruments in writing which need not be registered (*z*). The transferee of an instrument known as a chose in action or actionable claim under the Transfer of Property Act succeeding, as he does to the right, title and interest of the transferor, takes the instrument subject to all the liabilities and equities of the transferor at the date of the transfer (*a*). But the transferee of a negotiable instrument under this Act takes it free from all the defects of title of his transferor (*b*). As has been previously explained the present law has been enacted for the facility of trade and commerce and some instruments have been made transferable by delivery or endorsement or by both and the necessity of a written document of transfer applicable to choses in action has been dispensed with (*c*). Negotiability gives a ready circulation and currency to promotes among the community at large and enables them to perform in a vast variety of cases the function of money (*d*). The holder of a negotiable instrument is competent to sue on it in his own name without giving any notice and absence or failure of consideration, proveable as between the immediate parties, cannot be shown when the instrument passes to a holder in due course who holds it free from all defects (*e*).

**Definition exhaustive:**—This definition of negotiable instruments is exhaustive so far as this Act is concerned (*f*). It includes Government Promotes (*g*) which are transferable only

- (*y*<sup>2</sup>) *Benode v Asutosh*, 16 CWN 666, 14 IC 720  
*Surath v Narayan*, 38 CWN 465, *Muthar v Kadur*, 28 Mad 544  
*Suba v Ramasami*, 30 Mad. 88 (FB)  
*Aruna Chala v Suba*, 17 MLJ 393  
*Raman v Nagarajan*, 15 IC 380  
*Palavan v Karu*, 66 IC 501.
- (*z*) *Ibid*, *T Chetty v Solomon*, 55 IC 718
- (*a*) Transfer of Property Act Sec 132 (see notes to sec 14 *post*)
- (*b*) *Mahammad v Ranga Rao*, 24 Mad 654
- (*c*) T P Act Sec 137
- (*d*) Story on Pro-notes Sec 41
- (*e*) Sec 43 *post*
- (*f*) *Mercantile Bank v Mascarenhas*, 52 Bom 792, 1928 Bom 407; on appeal, 56 Bom 1, 30 Bom LR 1210, 1932 PC 22, 54 CLJ 419, *Benode v Asutosh*, 16 CWN 666
- (*g*) *Hansraj v Tuttonji*, 24 Bom. 65, 1 Bom LR 734.

by indorsement on the back and should be renewed when there is no space left for indorsement (*h*)

Port Trust and Improvement Trust Debentures and not Municipal Debentures of Bombay (*i*), foreign bonds issued by foreign Governments if payable by custom to a bearer (*j*), Debentures (*k*), but not bonds (*l*) issued by public bodies like Corporations, and Municipalities or trading companies, stock certificates like share certificates, dividend warrants issued by a company on its bankers in the form of a cheque and made payable to bearer or order (*m*), Railway receipt according to a custom in Bombay (*n*) but not in Rangoon (*o*), a bill of lading but not a mate's receipt (*p*) are negotiable. Share certificates issued by a company in the prescribed form are not in themselves negotiable but they are held negotiable on the ground of estoppel or usage (*q*). Pending issue of bonds or certificates for delivery scrips are provisionally granted on a one-anna stamp to purchasers of stocks. Such scrips can be transferred like a negotiable instrument. Law Merchant is capable of expansion and in England, to keep pace with the growing expansion of trade and commerce, instruments not originally negotiable, have been taken in the fold of negotiable instruments (*r*). It is submitted that similar steps will have to be taken also here to meet the requirements of growing trade and commerce.

**Promissory Note:**—To be negotiable a promote must be payable either to order or to bearer (*s*). A note that is neither payable to order nor to bearer is not negotiable. A note payable

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- (*h*) *Monmohini v Secy of State for India*, 22 WR 106, 13 BLR 359  
*Merba v Perozba*, 5 Bom 268  
Sec 5 The Securities Act X of 1920
  - (*i*) *Mitrcantile Bank of India Ltd v D'Silva*, 1928 Bom 436; 52 Bom.  
910, 30 Bom LR 1210
  - (*j*) *Picker v The London and Country Banking Co*, 18 QBD 515
  - (*k*) 2 KB 144
  - (*l*) *Mercantile Bank v D'Silva*, 30 Bom LR 1210, 52 Bom 910, 1928  
Bom 436
  - (*m*) 2 QB 396
  - (*n*) *Amruchand v Ramdas*, 40 Bom 639, 1916 P.C. 7 affirming 38 Bom.  
659
  - (*o*) 1923 Rang 1
  - (*p*) *Nat Chappa v I Floating Co*, 41 Cal 670, 16 Bom LR 298, 22  
IC 311, (1914) MWN 163 (PC)
  - (*q*) *Luchmeechand v Bengal Coal Co*, 8 Cal 317, *Huzrimall v Satish*,  
46 Cal 331, 22 CWN 1036, 48 IC 966 But, See *Akbar Khan v*  
*Attar Singh*, 40 CWN 997 (PC)
  - (*r*) *Goodwins v Roberts*, LR 10 Eng 337
  - (*s*) *Huzrimall v Satish*, 46 Cal 331, 22 CWN 1036, 48 IC 966

to a person or to order or bearer on demand is void and illegal (*t*). A promote payable to a specified person or order is a negotiable instrument and is negotiable by endorsement (*u*). Before the Amending Act VIII of 1919 it was necessary to add the words, order, or, bearer, to make it negotiable and an instrument payable to a person without the addition of either of those two words was held to be not negotiable (*v*). It was not the practice in Bombay market to add these words. The custom prevailing there received a blow when the Bombay High Court held a cheque, in which the word 'bearer' was struck out and the word 'order' was not added, as not negotiable (*w*). To remove this anomaly the Amending Act VIII of 1919 was passed and explanation 1 was added. Under the explanation a note payable to A is equivalent to a note payable to A or order and is, therefore, negotiable (*x*).

A note is payable to a bearer when it is specifically so stated; and even when it is not so stated but the note is payable to a named payee it becomes payable to a bearer when, if there is a single endorsement, it is in blank, and if there are more than one endorsement, the last one is an endorsement in blank without the specification of the name of any particular person. Thus, a cheque is made payable to A. A puts his endorsement on the back without naming the person to whom it is to be paid but delivers it to X for negotiation. The cheque becomes a bearer cheque. Similarly, when a hundi drawn in favour of A or bearer is endorsed by the payee in favour of B without the addition of the word "or bearer" it ceases to be a bearer hundi and it can be paid only to the endorsee named (*y*).

**Words of Prohibition:**—An instrument becomes non-negotiable when transfer is expressly prohibited or when it is expressly made payable only to one certain person and neither of the words 'bearer' or 'order' is mentioned. To the former category falls a note like "Pay to A and to none else" and to the latter class falls a case "Pay to A alone." As in both the cases the note is not payable either to the order or bearer and the note has to be paid only to A and to none else, it is not a negotiable

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- (*t*) *Hidayat Ali v Nya Kyang*, 24 IC 721, *Chidambaram v Ayyasawmi*, 40 Mad 585  
 (*u*) *T Chetty v Solomon*, 55 IC 718  
 (*v*) *Rama v Venkatachella*, 30 Mad 75; 16 MLJ 554; 1 MLT 329, 76 IC 282, 21 Bom LR 1  
 (*w*) *Jeitha Parkha & Ors v Ramchandra*, 16 Bom. 698, *Dossabhai Hirchand v Virchand Dutchkaram*, 49 IC 388, 21 Bom LR 1  
 (*x*) *Hanstal v Lachmi Narain*, 1923 Lah 388, *Bankadas v Tarabas*, 1929 Nag 274  
 (*y*) *Forbes Campbell v Official Assignee*, 27 Bom LR 34, 86 IC 118

instrument (z) An instrument made or drawn payable to order or bearer can become non-negotiable by clearest words prohibiting transfer (a)

**Payable to two or more jointly:—**This clause has been added by Sec 2 of Act V of 1914 Before the addition of this clause, a note payable to two persons jointly was held valid but one, payable to either of the two payees in the alternative, was bad (b) But the addition of this clause has made such notes, *i.e.*, notes payable in the alternative to either, quite valid The Jog hundis payable alternatively to one of several payees are negotiable (c)

**14.** When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated

Negotiation

## NOTES

**Negotiation:—**This section defines negotiation A chose in action which includes a promote, a bill of exchange or a cheque is transferable in two ways, *e.g.*, under the Transfer of Property Act by a deed and under the provisions of this Act While the Transfer of Property Act applies to all classes of documents covered under the general term, chose in action, the provisions of this Act apply only to promotes, bills of exchange and cheques payable to order or bearer It, therefore, follows that when a promote, bill or cheque payable to order or bearer is transferred to a person by endorsement or delivery or by both as laid down in this Act the instrument is said to be negotiated as distinct from transfer by a document under the T P Act Thus, if the instrument is payable to "bearer" it can be negotiated by mere delivery—no endorsement being necessary If it is an instrument payable to order the transfer can be effected by endorsement and delivery (d) When such a transfer is effected the trans-

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(z) *Rama v Venkatachella*, 30 Mad 75, 76 IC 282; 16 MLJ 554, 1 MLT 329, *Nawab Akbar Khan v Attar Singh*, 40 CWN 997, 1936 PC 171 63 CLJ 541 63 IA. 279 162 IC 454

(a) *Ibid*

(b) *Mahamad v Ranga*, 24 Mad 654

(c) *Kananyalal v Balaram*, 43 MLJ 480, 1923 Mad 44, 16 LW 608, 31 MLT 284; 68 IC 92, *Kamalsingh v Rambhorsha*, 1943 Nag 99, 205 IC 387

(d) *Arunachala v Suba*, 11 Mad 290, 17 MLJ 393; 3 MLT 7, *Khoo Eo Khewet v Nanigram*, 40 IC 86, 14 Bom LR 25

ferree is constituted a holder of the instrument (vide notes to Section 8 *supra*) The payee or the endorsee is a holder by negotiation (*e*)

**Difference between ordinary transfer and negotiation:—**

While the Act does not prohibit transfer of negotiable instruments otherwise than by negotiation (*f*) and the equitable title to the instrument may be transferred by the holder in possession by a deed or by the order of the court (*g*), transfer under this Act has the effect of conferring upon the holder in due course such special rights and privileges as the ordinary transferee of a chose in action does not enjoy *2 e* he takes it free from all the defects of its previous holder (*h*), and it entitles the transferee to the possession of the document and to recover the amount due thereon in his own name (*i*) But the provisions laid down in this Act must be strictly followed to entitle the transferee to the special privileges of a holder in due course Therefore, if a bill payable to order is transferred by mere delivery and not by endorsement and delivery as this Act requires, the bill cannot be said to be negotiated and such transfer will have the effect of a transfer under the ordinary law passing only the right, title, and interest of the transferor (*j*) An endorsement on a note to pay X or order as per accounts attached, without recourse, is a negotiation and not an assignment of the instrument (*j*<sup>1</sup>) It will, thus, be seen that the difference in the legal effect of transfer under this Act and of that under the ordinary law is considerable It is, however, to be noted that a document is negotiable, if by the custom of the money market it is transferable like cash A delivery order may or may not be negotiable, the question depends upon the conditions attached to it and the usage of trade under which it is issued (*k*)

**Collateral Securities:—**There is a conflict of opinions as to the legal effect of transfer or negotiation on collateral securities

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- (*e*) *Lloyds' Bank v Chartered Bank*, (1929) KB 40
  - (*f*) *Muthur v Kadir*, 28 Mad 544, *Lodd Govinda v Munappa*, 31 Mad 534, 4 M.L.T. 341, *Kuthalalingam v Packiam*, 21 M.L.T. 422, 8 IC 17
  - (*g*) *Secretary of State v Radhika*, 46 Mad 259, *Pannalal v Hargopal*, 51 IC 250
  - (*h*) *Ram Chandra v Rowthan*, 24 Mad 657; *Mahamad v. Runga*, 24 Mad 654, *Kuthur v Madir*, 28 Mad 544
  - (*i*) *Sadasuk v Kishan Pershad*, 46 Cal 663, 23 C.W.N. 937; 29 C.L.J. 340, 15 IC 216
  - (*j*) *Patthal Ambadi v Krishnan*, 11 Mad 290, *Abhoy v Ram Chandra*, 17 Mad 461; *Pannalal v Hargopal*, 51 IC 250; 29 P.R. 1919
  - (*j*<sup>1</sup>) *Ram Jao v Shahabuddin*, 1927 Lah 89
  - (*k*) *Khoor Eo Khewet v Nanigram*, 10 Bur LT 92, 9 L.B.R. 143, 40 IC 86

*ie* whether securities deposited for the debts due on a promote pass along with the transfer or negotiation of the promote. In some cases it was held that the securities passed along with the debt (*l*). But these decisions have not been followed in later cases and it has been held that the endorsee for value of a negotiable instrument, the amount of which is secured by a mortgage by deposit of title deeds, cannot claim to enforce the mortgage without a registered conveyance of the mortgage securities (*m*).

### 15. When the maker or holder of a negotiable

Indorsement.

instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser"

### NOTES

**Object of the Section:**—Indorsement which, in the technical sense as applied to negotiable instruments, means writing by one his name on the back of the instrument, is necessary in the interest of the endorsee. It is meant as a guarantee by the maker of the indorsement to the indorsee that (i) at the time of the indorsement the indorser has a good title to the instrument, (ii) that the instrument is a genuine one, (iii) that all prior indorsements are genuine.

**What constitute valid indorsements.**—To operate as a valid indorsement it must be on the back or face of the instrument except in the case of G P notes where the indorsement must always be on the back (*n*), or on a slip of paper annexed thereto but not on a copy of the instrument (*o*). It must be by the maker or holder or by the drawer, the indorsee or the payee (*p*) but not by a stranger (*q*). Even if a stranger puts his signature he does not make himself liable

(*l*) *Nataraja v South India Bank*, 37 Mad 51, *Perumal v Perumal*, 44 Mad 196, *Cuniah v Gopala*, 26 M L T 242.

(*m*) *Elumalai v Balkrishna*, 44 Mad 965, *Imperial Bank of India v Bengal National Bank*, 59 Cal 377 (P C); *Raja Gopala v Ranganatha*, 40 L W 481.

(*n*) Section 5 of Act XIII of 1886.

(*o*) *Ardeskur v Khosaldas*, 32 Bom 247.

(*p*) *Mahmad v Ranga*, 24 Mad 654.

(*q*) *Suppai v Kandaswami*, 19 L W 560, 1924 Mad 617, 80 IC 567; *Kothanda v Ramiah*, 41 IC 186.

on the instrument but he may take the liability if he guarantees payment (r)

**Nature of Indorsements:**—It is not indispensable that any particular form of word should be used (s) Signature of a party, endorsing, or the mark of an illiterate holder is sufficient under section 3 of the General Clauses Act When the intention to transfer is clear, anything may be written over the signature or mark and the indorsement will be valid (t) The word 'signed' has not been defined in the N I Act Therefore, a man may sign a promote by getting some one to write his name for him although such man does not affix his mark thereto (u) But a mere acknowledgment of receipt of money due under a promote or word indicating conditional directions to pay is not an indorsement under this section (v) The spelling of the name in the indorsement must correspond with the spelling in the instrument itself even if the name of the payee or indorsee is wrongly spelt or if they are wrongly designated in the instrument The payee, however, if he likes, may add his correct name in bracket (w) Initials will suffice The indorsement need not necessarily be in ink but may be in pencil although the former is preferable to avoid risk of detachment (x) After circulation when there is no space left for further indorsement in the body of the note, an indorsement can be made on a slip of paper attached to the note Such a slip is called 'Allonge' (x<sup>1</sup>)

**Blank Instrument:**—Though indorsement presupposes the existence of a completed instrument yet a transfer may be made of a bill previous to its completion by indorsement and delivery (vide Section 20 *post*)

**16.** (1) If the indorser signs his name only, the indorsement is said to be "in blank" and "in full" "in blank," and if he adds a direction to pay the amount mentioned in the

- (r) *Brojendra v Hindusthan Co Ins Society*, 44 Cal 978, *Thakersav v Krishendas*, 1925 Sindh 9
- (s) *Sivaram v Moudeen*, 33 Mad 34, 19 M L J 309, 6 M L T 237, 3 I C 428, *Babulal v Budhoo*, 1935 Oudh 264 154 I C 575
- (t) *Ibid*; *Srinivasa v Venkatamal*, 24 M L J 296, *Ramji Das v Shujaud-din*, 95 I.C 704; *Abhoy v Ram Chandra*, 17 Mad 461
- (u) *Ma Huen v Maung*, 1936 Rang 27 161 I C 528; *Kunhisparambath v Aniholi*, 59 I C 943
- (v) *Chandu v Ramunni*, 39 M L J 273, *Monmohini v Secretary of State*, 22 W R 106, 13 B L R 359
- (w) 2 Stark 29
- (x) *Geary v Physic*, (1826) 5 B and C 234
- (x<sup>1</sup>) *Monmohini v Secretary of State*, 22 W R 106, 13 B L R 359.

instrument to, or to the order of, a specified person, the indorsement is said to be, "in full", and the person so specified is called the "indorsee" of the instrument

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee

## NOTES

This section enumerates the two classes of indorsement *e.g.* indorsement in blank and indorsement in full and also defines the term "indorsee" When the indorser only signs his name on the back or face of a note, as the case may be, without mentioning the name of the person in whose favour the indorsement is made, the indorsement is said to be in blank In such a case the instrument passes by mere delivery as if it were a bearer note (*x*<sup>2</sup>) It has, therefore, been held that a transferee by mere delivery of such an instrument is not a party to it, the payee is neither liable under it nor is he entitled to the privileges of the same (*y*) But a bona fide holder of an instrument, indorsed in blank, may constitute himself the assignee by making it payable to himself by inserting over the name of the indorser "Pay to A B or order"

**Indorsement in full:**—When an indorsement specifically mentions the name of the person in whose favour it is made as "Pay to A or order" or 'Pay to A' over the signature of the person making the indorsement, it is said to be in full It must contain a direction to pay although no actual form is prescribed Thus, an indorsement stating that a note is made over to X on a particular date and signed by the payee is an indorsement in full and will operate as a negotiation when the instrument is delivered (*z*) But an acknowledgment of payment signed by one of the alternative payees is neither an indorsement in full nor an indorsement in blank and cannot be an assignment of actionable claims under Section 130 T P Act (*a*).

(*x*<sup>2</sup>) Section 34 B of E Act, *P C Bhandari v P N Bank*, 1938 Lah 528: 181 IC 272

(*y*) *Valjee v Harsook*, 62 MLJ 239, *Sivaram v Moideen*, 33 Mad 34; 19 MLJ 509, 6 MLT 237, 3 IC 428

(*z*) *Srinivasa v Venkatammal*, 24 MLJ 296, *Sivarama v Moideen*, 33 Mad 34, 19 MLJ 509, 6 MLT 237; 3 IC 428

(*a*) *Kunhuparambath v Antholi*, 59 IC 943, 1921 Mad 122.



**Sub-section 2:**—This sub-section was added by section 3 of the N I (Amendment) Act, 1914 (V of 1914)

It protects the drawer and the indorsee as well, if the signature of the indorsee is not genuine (b)

**17.** Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly

Ambiguous instruments

## NOTES

When from the form or the terms of an instrument it admits of being construed either as a promote or as a bill of exchange it is an ambiguous instrument and this section gives the holder of the ambiguous instrument the option to treat it as either. Thus, where in a bill the drawer and the drawee are the same person or where the drawee is a fictitious person or a person incapable of entering into a contract or generally when the instrument is made in term or form so ambiguous that it is doubtful whether it is a promote or a bill of exchange the holder may, at his option, treat it as either (c) Bills drawn by an agent on the principal, by one branch of a bank on another, are ambiguous documents (d) A person who accepted a hundi, purporting to be a promissory note, was held liable as an acceptor even though his name was not indicated therein as a drawee (e) When a hundi is ambiguous i.e. when it may be taken as a promote or as a bill of exchange the holder is entitled to treat it as either (f) A hundi is sometimes a promote and sometimes a bill of exchange (g) But once the election is made to treat the instrument as a bill of exchange the holder cannot subsequently elect to treat it as a promote (h) and *vice versa*. An ambiguous document must be distinguished from an inchoate instrument. While the

- (b) *Jagjivandas v The Nagar Central Bank*, 1926 Bom 262, 50 Bom 118, 28 Bom L.R. 226, 93 IC 619
- (c) *Joges v Ibrahim*, 57 Cal 695, 1930 Cal 697, 129 IC 305, *Bibi Kazmi v Lachman*, 1930 Pat 239, *Jalan Chand v Asharam*, 22 CLJ 22; 33 IC 247
- (d) *Lachman v Ramchandra*, 51 IC 859, *Radha Kishen v Hiralal*, 58 IC 313
- (e) *Jogesh v. Ibrahim*, 57 Cal 695, 1930 Cal 697, 127 I.C. 305
- (f) *Ibid*
- (g) *Radhakishen v. Hiralal*, 58 IC 313
- (h) *Ibid*; *Srinivasa v Venkata*, 24 MLJ 296; *Sulaiman v The New Oriental Bank Corporation*, 15 Bom. 267.

former must be construed either as a bill or as a note, the latter will be neither until it is filled up by the holder. And before it is so filled up and made complete, no liability will arise thereunder. Thus, an instrument containing neither the name of the payee nor of the drawer, though the defendant had accepted it, was neither a bill nor a note (*h*<sup>1</sup>).

**Stamp chargeable:**—Section 6 of the Indian Stamp Act provides that where an instrument falls within more than one description and the duties chargeable thereunder are different it will be chargeable only with the highest of such duties. The right of election given to a holder under section 17 of this Act is absolute and is not taken away by section 6 of the Stamp Act. Section 17 of this Act is to be read as a proviso to section 6 of the Stamp Act (*i*).

**18.** If the amount undertaken or ordered to be  
 Where amount is stated paid is stated differently in figures  
 differently in figures and and in words, the amount stated  
 words in words shall be the amount  
 undertaken or ordered to be paid

## NOTES

The object of this section is to guard against inadvertent slip or inaccuracy. A man is more likely to commit a mistake in putting the figure than in putting the sum in words. Therefore, greater reliance is placed upon the written words than upon the figures.

**Written words prevail:**—It is customary for bills and notes to have the amount within the figures at the top of the instrument and, in words, in the body of the instrument. Where there is a discrepancy between the two, the sum denoted by the words is the amount payable and evidence cannot be adduced to show that in fact there is a mistake made in writing the words in the body of the instrument (*i*<sup>1</sup>). The figure at the top or margin is meant to strike the eye immediately as a note or summary of the contents (*j*) and may be helpful in supplying the omission (*k*). The section has no application where the amount given in the margin is in words and differs

(*h*<sup>1</sup>) *M'Call v Taylor*, (1865) 34 L.J. (CP) 365

(*i*) *Alagappa v Narayanam*, 1932 Mad 765; 36 L.W. 599, 140 I.C. 315, 63 M.L.J. 548

(*j*) *Halsbury* vol II, p. 466, (1839) 5 Bing. 425 (N.L.)

(*j*) *Garrard v Lewes*, (1882) 10 Q.B.D. 30

(*k*) 11 L.B.R. 439

from the amount in words in the body of the instrument. In such a case evidence will be admissible to prove the intention of the parties, but if the amount in the body of the instrument be in figures, the applicability of the section becomes doubtful. It may, however, be submitted that having regard to the underlying principle of trustworthiness of written words over the figures the written words should prevail. Similarly, if the written words of an instrument differ from the printed matter the written words will prevail (*l*). Where the words in the body of the instrument are ambiguous the marginal figure and the stamp may be taken into consideration in construing the words (*l*<sup>1</sup>). An omission in the body of the instrument may be added to by superscription (*l*<sup>2</sup>). Obvious mistakes or omissions in the written words will not invalidate a document provided the intention of the parties is clear (*m*).

- 19.** A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand
- Instruments payable on demand

## NOTES

The section may be conveniently read with section 21 (post). The insertion of the word 'cheque' seems to be superfluous as the very definition of 'cheque' in section 6 of the Act shews that it is always an 'on demand' instrument. A note which does not fix any date for payment is payable on demand (*n*). The cause of action on such notes arises on the date of execution of the instrument (*o*) and there is no necessity to prove any demand to complete the cause of action (*p*).

(*l*) *Paul v Chotalal*, 30 Bom 1, *Hasan v Chotalal*, 29 Bom 360

(*F*) Halsbury vol II P 613

(*F*) *R v Elliot*, (1777), 1 Leach 210, East PC 951

(*m*) *R v Post*, (1806) R & R 161, *Phipps v Tanner*, (1881) 5 C & P. 488

(*n*) *Tuttu v Maivappa*, 45 IC 22, 18 MWN. 177, 8 LW 501

(*o*) *Brajendra Kishore v Hindustan Insurance*, 44 Cal 978, *Durga Prasad v Kalicharan*, 40 CLJ 84, *Framroz v Mahomed Essa*, 50 Bom 266, *Ranjit v Kishori*, 1940 Cal 401 1LR. (1940) 2 Cal. 362 44 CWN 985 191 IC 608

(*p*) *D N Saha v Bengal National Bank*, 47 Cal 861; 33 CLJ 541, 1921 Cal 302; 60 IC 940, *Annamal v Velayuda*, 39 Mad 129 (FB), *Secy of State v Pandit Radhika Prasad*, 46 Mad. 259, 288; Cp 1919 MWN. 185.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in the States, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby, gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

### NOTES

Persons often lend their mercantile credit to others signing their names in blank papers to be afterwards filled up as completed documents (q). A person in possession of an incomplete bill in any material particular has a *prima facie* authority to fill it up and thus he is an agent of the person delivering the blank instrument. Therefore, where a person gives another a blank hundi with his signature he *prima facie* authorises the latter to fill it up and to give to the world the bill as accepted by him and cannot set up secret stipulations between himself and his agent against a bona fide holder for value (r). The principle is not so much of agency as that of estoppel. When a bill blank as to the drawer's name is accepted by one who delivers it to another, the latter is authorised to insert his name as a drawer and to use it and so to give the bill currency (r<sup>1</sup>). The power to fill up the blank is not cancelled by the death of the acceptor. A party can fill up a blank in an inchoate instrument and sue on it himself after filling it up or endorse it to some one (s). No

(q) Daniel Sec 142

(r) *Shantidas v Hirralal*, 59 IC 657 1921 Nag 113, *Hriday v Kailas*, 1940 Pat 377 186 IC 809, *Harj v Nathu*, 1941 Pat 504 194 IC 433

(r<sup>1</sup>) *Scard v Jackson*, (1875) 34 LT NS 65

(s) *M N P L Firm v Kerwan*, 17 IC 915, *Brijbhuson v Ramjanam*, 1932 Pat 324, 13 Pat LT 506

suit can lie on an inchoate instrument unless the blanks are filled in by the payee (t), but the plaintiff can sue on the original loan itself (u). As law does not require a cheque to be stamped the section does not apply to cheques (u<sup>1</sup>)

**Incomplete instrument.**—An instrument may be wholly or partially incomplete. Where the drawer only signs his name and leaves everything else to be written afterwards it is wholly incomplete. But where he leaves a blank about the amount or the date or the name of the payee, it is partially incomplete. In any case the section authorises the holder to fill up the blanks and complete the document and bind the signer as if he signed a completed document. The name of the payee is usually left a blank to enable the holder to pass on the instrument without personally incurring liability as an indorser (v). There is no fixed time limit within which the right of completing an instrument is to be exercised but it must be done within a reasonable time. The authority may be exercised by any holder and not necessarily by the person to whom the inchoate instrument is delivered (w).

Under section 9, the payee is a holder in due course and the privilege of the section extends to him (w<sup>1</sup>). It can be filled up even after the death of the acceptor (x). An acceptor cannot set up the plea that either the drawing or the indorsement is a forgery (x<sup>1</sup>).

**Delivery:**—The condition precedent to the enforcement of liability of a signer is that he should deliver the instrument to another. Where there is no delivery, no question of liability arises. Where a person signed a blank acceptance and placed it in his drawer from where it was stolen, completed and negotiated, it was held he was not liable even to a holder in due course as he never delivered the bill to be filled up by any body (y). The section presupposes negotiation on

(t) *Ibid*

(u) *Wahdanneesa v Surjadas*, 5 Cal 39, *Punjab National Bank v Mercantile Bank of India*, 13 Bom LR 835

(u<sup>1</sup>) *A B v Sohon*, 1937 Lah 816 176 IC 30

(v) *Gokuldas v Radhakisan*, 54 IC 3

(w) *Cruchley v Clarence*, (1813) M & S 90

(w<sup>1</sup>) *Lloyds Bank v Chartered Bank of India*, (1929) 1 KB 40

(x) *M N P L Firm v Kirwan*, 17 IC 915, *Carter v White*, (1883) 25 Ch D 666

(x<sup>1</sup>) *In re Gooch*, (1921) 2 KB 593

(y) *Aude v Dixon*, (1851) 6 Ex 869, *Baxendale v Bennet*, (1878) 3 QBD 524 (CA)

the part of the person signing the blank or incomplete instruments (z)

**Stamp paper:**—The instrument must be stamped at the time of delivery. The stamp must be according to the law for the time being in force in the country for the negotiable instruments. The statutory estoppel will not operate if an unstamped document is signed and delivered. But the signer of an unstamped instrument may be held liable under the general law on the ground that by such signature he makes a representation that he will pay (a). The estoppel under this section applies only to the papers the signature covers. The delivery of several signed stamps separately does not give *prima facie* authority to stick them together for the purpose of a single document, much less can unsigned stamps be attached to a signed blank hundi to make thereon a negotiable instrument outside the maximum value covered by the signed stamp (b). The stamp requires to be crossed by the signature. But a document, whose stamp has not been crossed by the signature, may still come under section 20, if the stamp had been cancelled in accordance with section 12 of the Stamp Act (c).

**Amount:**—No question will arise if the amount is not blank or is determinable. But in case it is blank or not ascertainable the holder will be at liberty to put any amount up to the maximum limit covered by the stamp the instrument bears. Persons other than a holder in due course will not be able to recover more than was intended by the instrument. A holder in due course can recover, under certain circumstances, more than is intended by the drawer up to the maximum limit allowed by the stamp (d). So long as the amount of a promote can be found out from the instrument itself without extraneous aid the omission to state it in the body of the promote does not vitiate its character as such (e).

**21.** In a promissory note or bill of exchange the expressions “at sight” and “on presentment” mean on demand. The expression “after sight” means, in a promissory

(z) *Punjab National Bank v Mercantile Bank of India*, 13 Bom LR 835

(a) *Smith v Prosser*, (1907) 2 KB 735, 751

(b) *Gakuldas v Radhakisen*, 54 IC 3

(c) *Emperor v Jawahar Thakur*, 14 ALJ 643; 38 All 430, 34 IC 315.

(d) *Gerrard v Lewis*, (1882) 10 QBD 30, *Herdman v Wheeler*, (1902) 1 KB 361

(e) 1 Bur LJ 172

note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance

## NOTES

A note payable "at sight" or 'on presentment' is a note payable on demand like a note which is specifically stated to be payable on demand or a note for the payment of which no time is mentioned (Section 22 *Supra*). All the four kinds of notes are 'on demand' notes. The expressions 'at sight' and 'on presentment' mean 'on demand' (*f*). But still there is an important difference between 'at sight' and 'on presentment' notes on one hand and notes specifically stated to be payable on demand and notes for the payment of which no time is mentioned, on the other. In the former class of notes the cause of action does not arise before the note is actually presented and the demand is made while in the latter class it need not be presented at all and no demand need actually be made. It, therefore, follows that the note of former class does not become payable before it is presented and, therefore, limitation cannot begin to run before presentation. Of the latter class the limitation would run from the date of the instrument. Under the Indian Stamp Act Schedule 1 Arts. 13 and 49 stamp necessary in all these cases will be the same. The expression "after sight" has no more meaning than "at sight" if no definite period is prefixed to it as, for instance, "30 days after sight" at the end of which it becomes payable. If no such period is prefixed to it, it will mean the same thing as "at sight" (*g*). In case of a note, the phrase 'after sight' means after exhibition, thereof, to the maker for founding a claim for payment (*h*), and in case of a bill of exchange, the phrase means after acceptance, or noting for non-acceptance, or protest for non-acceptance (*i*).

**22.** The maturity of a promissory note or bill of exchange is the date at which it falls due

"Maturity"

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment

Days of grace

(*f*) *Durgaprasad v. Kalicharan*, 40 CLJ 84.

(*g*) Byles (19th Ed.) 79

(*h*) *Holmes v. Harrison*, (1810) L. Taunt 323

(*i*) (1827) 7 B & C 416

is at maturity on the third day after the day on which it is expressed to be payable

## NOTES

This section and the three succeeding sections lay down the rules for maturity of the negotiable instruments. Notes which are payable on demand mature on the day the instrument is executed. Notes payable at sight and on presentment mature when presented and payment is demanded. These instruments are not entitled to days of grace and become payable at once (*j*). As there is no particular date for maturity of these instruments they cannot be said to be overdue under section 59 so as to affect the subsequent holder with notice of defect of title (*k*). A note or a bill of exchange which is not expressed to be payable on demand or at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable (*l*). Where a note is payable by instalments days of grace are allowed after each instalment falls due in spite of the use of the word "punctually" (*m*), but the parties may contract themselves out of the days of grace (*n*). Where days of grace are allowed presentation of the instrument must be on the last day of grace and not earlier. Earlier presentation is invalid (*o*). No days of grace are allowed for cheques which are always payable on demand (*p*). Interest can be charged for the days of grace (*q*). When there is a contract to that effect interest can be sued for before the principal matures. Maturity of interest can, however, be postponed beyond the maturity of the principal (*r*). The law of the land where the note is accepted determines the number of the days of grace. The section does not apply to hundis in oriental language which are governed by local usages (*r*<sup>1</sup>).

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(*j*) *Hemadri v Seshamma*, 1930 MWN 1232, 1931 Mad 113, 130 IC 477

(*k*) *D N Saha v Bengal National Bank*, 47 Cal 861, 33 CLJ 541, 1921 Cal 302, 60 IC 940

(*l*) *Ganga v Hira*, 39 All 86, 14 ALJ 1166, 27 IC 608

(*m*) *Schaverien v Morris*, (1921) 37 TLR 366

(*n*) *Suba v Ramaswami*, 28 M 244, 30 Mad 88 (FB), *Valeappa v Subramaniam*, 26 MLJ 494, 15 MLT 342, 23 IC 431

(*o*) Sec 24 (1) B of E Act, *Kennedy v Thomas*, (1894) 2 WB 759

(*p*) 30 LW 470 (PC)

(*q*) Daniel Sec 614

(*r*) *Wiffen v Roberts*, (1795) 1 Esp 261

(*r*<sup>1</sup>) *Karam v Nihal*, 1940 Lah 14 186 IC 693



**23.** In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

#### Illustrations

(a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

#### NOTES

The time is always to be computed according to the Gregorian Calendar (<sup>r</sup>) except in case of hundis where, if any custom to the contrary prevails, the rule will have no application. In case of undated instruments the time of maturity is to be reckoned from the date on which it was drawn (<sup>s</sup>). If the date given is an impossible one, as the 31st of September, computation of date for maturity should begin from the nearest date i.e. from the 30th Sept (<sup>t</sup>). If the date inserted is a wrong one the holder is entitled to treat it as a correct date.

(<sup>r</sup>) General clauses Act section 3 (33) & (39).

(<sup>s</sup>) *Giles v Bourne*, (1817) 6 M & S 73

(<sup>t</sup>) *Latsfamnessa v Dhan Kuwar*, 24 Cal 382 But see *Almas v Mahamad*, 6 Cal 239

**Usances:**—Foreign bills are drawn payable at what are known as ‘usances’, that is to say, the time appointed for payment of a bill drawn in one country and made payable in another. The length of the time so appointed varies in different countries and is regulated by the distance and facilities of communication between the two countries and is governed by the custom of the country where it is payable.

**24.** In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

### NOTES

This section specifies the date from which the time of maturity is to be calculated. It is well settled that in case of commercial instruments drawn payable at so many days after sight the day of the date is to be excluded in calculating the time of maturity (*u*). Where an instrument is payable at a fixed period after date, or after sight or after happening of a specified event the time of payment is determined by excluding the day from which the time is to run and by including the day of payment (*v*). The time of maturity may, however, be accelerated, by the insertion of a condition, as where it is stipulated that if the acceptor suspends payment, the amount shall become due and payable at the option of the holder. Such clauses in the bills and notes do not affect negotiability (*v*<sup>1</sup>).

**25.** When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

*Explanation*—The expression “public holiday” includes Sundays, New Year’s day, Christmas day if

(*u*) *Nanak v Keshodas*, 27 IC 608

(*v*) (1795) 6 Term Rep 300

(*v*<sup>1</sup>) 9 Bom LJ 591

either of such days falls on a Sunday, the next following Monday Good Friday, and any other day declared by the Central Government, by notification in the official Gazette, to be a public holiday

### NOTES

In England when the last day of grace falls on Sunday, Christmas day or a day appointed by Royal Proclamation as a public fast and thanksgiving day the instrument is payable on a preceding business day. When the last day of grace is a Bank holiday under the Bank Holidays Act 1871 and the second day of grace is a Bank holiday the instrument is due and payable on the succeeding business day (2c). In this section no distinction is made between a public holiday and a Bank holiday as in England and the instrument becomes due on the next preceding business day (x). The powers of a Local Government under the explanation have been delegated to the Commissioners in Sindh by the Government of Bombay under Section 2 of Act V of 1868 (x<sup>1</sup>). The expression 'Local Government' in the explanation has been substituted by 'Central Government' by the Government of India (Adaption of Indian Laws) Order, 1937

## CHAPTER III

### PARTIES TO NOTES, BILLS AND CHEQUES.

**26.** Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself

(w) Halsbury Vol 11 P 477

(x) *Ganga v Hira*, 39 All 86, 14 ALJ 1166, *Nanak Singh v Kesho Das* 27 IC 608

(x<sup>1</sup>) Bombay Gazette, 1903, Part 1 p 449

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered

## NOTES

This section deals with the question as to who are competent to be parties to notes, bills of exchange or cheques as makers, drawers, acceptors, indorsers, payees or holders thereof. The capacity to incur liability as a party to a bill is co-extensive with the capacity to contract (y). Section 11 of the Indian Contract Act lays down that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. It, therefore, follows that a contract entered into by a person not competent to contract under that section *e.g.* by a minor (z), or by one of unsound mind (a), is void *i.e.* the contract is void against the disqualified party even with respect to a bona fide holder. There is no bar in the Contract Act preventing a disqualified person from becoming a promisee or a payee or an indorsee to negotiable instruments (b). Age of majority will be regulated by the law of his domicile (c). Under the Indian Majority Act (d) all persons who have attained the age of 18 are major, but when a guardian has been appointed under Act VIII of 1890 (e), or where only an order has been passed under that Act for the appointment of a guardian even though the certificate has not issued (f) the minority of the person will extend to his 21st year. The position is not affected by the subsequent discharge of the guardian by the court (g).

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- (y) Sec 22 (1) B of E Act
  - (z) *Mohori Bibi v Dharamdas*, 30 Cal 539 (PC), *Ma Hnat v Hashim*, 32 CLJ 214 (PC), 38 MLJ 353, *Jagon Ram v Mahadeo*, 36 Cal 768, *Nogendas v Anand Rao*, 31 Bom 590; *Suraj Narain v Sukhu Ahir*, 51 All 164, *Chengalroya v Naneappa*, 117 IC 133, *Dattaram v Enayak*, 24 Bom 181
  - (a) *Macharma v Usman*, 17 MLJ 78
  - (b) *Ulfah v Gouri*, 33 All 657, 8 ALJ 670; 11 IC 20
  - (c) *Kashiba v Shripat*, 19 Bom 697, *Lachmi v Fate Bahadur*, 25 All 195
  - (d) Act IX of 1875, Sec 3
  - (e) *Ibid*; *Gordhandas v Hari Bullav*, 21 Bom 281, *Rudra v Bhola*, 12 Cal 612
  - (f) *Mungruram v Gursahai*, 17 Cal 347 (PC), 9 Cal 901 overruled, *Shivram v Krishna*, 31 Bom 80
  - (g) *Nogendas v Ananda*, 31 Bom 590, *Bishen v Lahi*, 14 IC 301, *Jagonram v Mahadeo*, 36 Cal 768, *Gordhandas v Harwalab*, 21 Bom 281, *Gopal v Gonesh*, 4 CLJ 112

**Disqualified persons.**—The disqualification may be due to the provisions of the Contract Act or may arise from the provisions of any special enactment. The disqualified persons generally are, (i) minors, (ii) persons of unsound mind by reason of lunacy, idiocy, intoxication etc., (iii) those disqualified under common law (alien enemies or married women under English law), (iv) persons disqualified by statute law (proprietors under the Court of Wards or an agriculturist under the Deccan Agricultural Act or an insolvent under the Insolvency laws).

**Minor:**—The minority in each case must be specifically pleaded and proved (h) and the onus of proof lies on the defendant who sets up the plea of minority (i). What constitutes minority under the Indian law has been stated before. It has also been stated before that a contract by a minor is void (j) and cannot be ratified by him after attainment of majority (k). Again, a minor is not stopped from pleading minority even if he has falsely represented himself to be a major (l). And since the capacity to incur liability on a negotiable instrument is co-extensive with the capacity to contract a minor is not liable in any way under a contract on a negotiable instrument (m), nor is he liable even for damages for entering into a contract by misrepresentation and fraud (n). According to some a promissory note made by a minor being void cannot form the consideration of a fresh note executed by him after his attainment of majority (o), while according to the Calcutta High Court there is nothing unlawful in an infant's paying for the property he has

- (h) *Raja of Deo v. Abdulla* 45 Cal 909 (PC); 45 IA 97, *Jai Kishori v. Ali Ahmed*, 89 IC 108
- (i) *Harji v. Abdul Halim*, 60 IC 297
- (j) *Mohori Bibi v. Dharamdas*, 30 Cal 539 (PC); 30 IA 114; 7 CWN 111, 5 Bom LR 421, *Jagonram v. Mahadeo* 36 Cal 768, 13 CWN 643, 11 IC 721, *Ma Huit v. Hashim*, 32 CLJ 214, 38 MLJ 353 (PC); *Nogendus v. Ananda Rao*, 31 Bom 590; 9 Bom LR 495, *Dattaram v. Binayek*, 24 Bom 181, *Chengalroya v. Nannappa*, 117 IC 133
- (k) *Ramsuami v. Anthappa* 16 MLJ 422, *Bhaha v. Belasingh*, 51 IC 410 38 PR 1919, *Amarnath v. Khudumal*, 53 IC 123
- (l) *Mahamad v. Yesh Ooi*, 21 CWN 257 (PC), 43 IA 256, *Nawab Siddiq Ali v. Jaikishori*, 1928 PC 152, 55 MLJ 88; 30 Bom. I R 1346, *Baikunta v. Althumalan*, 38 Mad 1071, *Khangal v. Lakha*, 9 Lah 701 (FB); *Nawab of Murshudabad v. Bilas*, 56 Cal 252
- (m) *Ma Huit v. Hashim* 33 MLJ 353 (PC), 32 CLJ 214
- (n) *Mahamad v. Yesh Ooi* 21 CWN 257, 43 IA 256, *Nawab of Murshudabad v. Bilash*, 56 Cal 252
- (o) *Ramasuami v. Anthappa* 16 MLJ 422, *Karam v. Basanta*, 11 IC. 321

received and promised to pay for and, therefore, such a note is enforceable in law (*o*<sup>1</sup>) A note executed by the minor for necessities of life supplied is not enforceable against him (*p*), nor a note executed by his guardian (*p*<sup>1</sup>) In these cases while the note or bill is not enforceable against the minor it may be enforceable against others Thus, in the case of a note, made by a minor and endorsed by another person, the latter cannot set up the plea of minority of the maker in a suit by a subsequent holder (*q*) A minor cannot be made liable for a bill drawn on him by a third party (*r*) But if the bill was drawn upon a minor and was accepted by him after attainment of majority he would be liable as an acceptor because his incapacity to contract had already ceased (*s*) A minor is not liable on a post-dated cheque drawn before coming of age but for which he received consideration after coming of age (*t*)

Although a minor cannot be a party to a negotiable instrument, an instrument executed by him and an adult jointly is binding against the adult and is not absolutely void (*u*) But the case will be different if the instrument is executed by the minor alone and the money is taken by both the adult and the minor In that case the instrument cannot be enforced (*v*) Although a minor is not bound by an instrument his surety is (*w*)

From the above it would appear that a minor cannot be made liable under a negotiable instrument under any circumstances whether as a maker, drawer or acceptor etc But the Act does not prohibit a minor from acquiring benefits under a negotiable instrument Indeed, a minor can be a promisee or payee or holder and can enforce payment by a suit (*x*) He can endorse, without being bound by the indorsement, to enable the indorsee to make the maker, drawer, or acceptor liable (*y*)

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- (*o*<sup>1</sup>) *Kandan Bibi v Srenaram*, 11 CWN 135, *Arimadgam v Duraisinga*, 37 Mad 38  
 (*p*) *Prabhubhai v Ralita*, 1923 Bom 304  
 (*p*<sup>1</sup>) *Swaminatha v Natesa Iyer*, 56 Mad 879  
 (*q*) Sec 122 post  
 (*r*) *Williamson v Watts*, (1808) 1 Camp 552  
 (*s*) *Stevens v Jackson*, (1815) 4 Camp 164  
 (*t*) *Hutley v Peacock*, (1913) 30 TLR 42  
 (*u*) *Jamna v Basanta*, 39 Mad 409 (PC); *Kashiba v Sripat*, 19 Bom 697  
 (*v*) *Ma Hnit v Hashim*, 38 MLJ 353, 32 CLJ 214 (PC), *Angad v Srinath*, 3 IC 403  
 (*w*) *Kashiba v Sripat*, 19 Bom 697  
 (*x*) *Ulfat v Gouri*, 33 All 657, *Rangaraju v Maddura*, 24 MLJ 363, *Raghara v Srinivasa*, 40 Mad 308 (FB), *Munniya v Perumal*, 24 MLJ 352  
 (*y*) Daniel Sec 227, *Rohil Khand & K Bank v Row*, 7 All 490

A minor can issue cheques against a bank if he has funds there but a bank cannot recover the money from the minor if, by mistake, the minor overdraws. A minor son, as agent of his father, can enter into a contract for his father, if duly authorised (z)

**Lunatics:—**Section 12 of the Indian Contract Act defines what is sound mind for the purpose of entering into a contract. A lunatic or a drunken person or any other person who for the time being is incapable of understanding the effect and signature of a contract at the time of making it, is on the same footing as a minor and a contract by a lunatic is absolutely void (a). The presumption is in favour of sanity (b). The party pleading lunacy or incapacity to understand the contract must prove this to have existed at the time of contract (c) and a plaintiff who challenges a deed on the ground of unsoundness of mind must sufficiently establish this in order to get relief (d). To invalidate a contract it is necessary to prove that the other party had knowledge of lunacy (e).

**Insolvents and Wards of Court:—**A insolvent or a ward of Court is also incompetent to contract under the special provisions of those laws (f) and the law that applies to minors applies to them. But if an instrument is executed in favour of an insolvent after adjudication he can sue on it if the receiver does not intervene (g).

**Aliens:—**An alien may enter into a contract and so even an alien enemy living in British India in the same way as if he were a British subject (h).

**Married women:—**There is no bar in Indian law to a married woman entering into a contract. English women domi-

(z) *Palamappa Chettiar v. Sharamugan Chettiar*, 11 Mad 815, 35 MLJ 90, 24 MLT 51, 8 I W 317, 49 IC 23.

(a) *Shamagar Jute Factory v. Ram Narain* 14 Cal 189, *Rangaswami v. Sankatalingam*, 43 Mad 816, *Mahaima v. Osman*, 17 MLJ 78, *Kamola v. Kanra*, 11 PR 1912.

(b) *Terumamangul Ramaswami* 1 MHCR 214.

(c) *Ramsundar v. Rajkumar* 53 Cal 285, *Jainarain v. Mahabir*, 1926 Oudh 170, 95 IC 857, *Sriramulu v. Andalammal*, 30 Mad 145.

(d) *Ram Sahye Bhukkut v. Lalla Lalji Sahya*, 8 Cal 149, *Id. Yakub v. Abdul Quddus*, 68 IC 372, 1923 Pat 187, 4 Pat LT 17.

(e) *Harinath v. Krishna* 11 Cal 152, *Rangasami v. Sankara*, 43 Mad 816.

(f) *Jagon Ram v. Mahadeo*, 36 Cal 768, *Brijmohan v. Rudra Prakas*, 17 Cal 941.

(g) *Ali Mahamad v. Vadi Lal* 43 Bom 890, *Ram Ballav v. Bickraj*, 19 IC 88; *Sriramulu v. Andalammal*, 30 Mad. 145, 10 Bom LR 23.

(h) Naturalisation Act 1870; CP Code Sec 83; 1 Lah 236.

ciled in India and married here are governed by the same rule (i)

**Corporations:**—A corporation is not competent to make, indorse, or accept a promote, bill of exchange or cheque unless specific authority for the same has been given to it by the Articles of Association (j), or if no such specific authority is found, such power can be implied if it is necessary and incidental to the purpose for which it has been created (k). In the absence of such express or implied authority a corporation will not be bound by a note or a bill drawn by a managing agent of the company even to a holder in due course (l). When such specific or implied authority exists it must be exercised by the officers duly authorised in this behalf and in the name of the company (m). The liability of the company should be made plain on the face of the instrument, otherwise, it won't be liable with regard to third persons (n). Thus, when a hundi drawn in favour of X was endorsed twice by him 'X' and 'X' managing agent of Y and Co, it was held that expression 'managing agent' was merely decorative or descriptive and so the company was not liable (n<sup>1</sup>). Dissolution of a company determines its own power and necessarily its delegated power. When an instrument was executed by the director but not in the name of the company, the company was not held liable on the instrument even though the seal of the company was used (o). After liquidation, a liquidator cannot make or endorse notes (p). It is material to consider whether the corporation is a trading company or a non-trading company. The term trade is not co-extensive with business, it has a restricted meaning. A trading company may exercise such power, but a non-trading company cannot, unless such power is expressly conferred by the Articles of Association. Therefore, a Railway company (q),

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- (i) Indian Succession Act, Sec 4, Married Women's Property Act (111 of 1874), Sec 7
  - (j) *Rangasami v Sankaralingam*, 43 Mad 816, *Muralidhar v Subdu*, 3 Bom 149, *Chunilal v Spencis Hotel*, 1 B L R O C 14
  - (k) *Shamnagar Jute Factory v Ram Narain*, 14 Cal 189, *Rangaswami v Sankaralingam*, 43 Mad 816
  - (l) Sec 22 (2) Bill of Exchange Act
  - (m) *Ramasami v Municipal Council*, 29 Mad 360, *Raman v Municipal Council*, 30 Mad 290, *Abaji v Trimbuk Municipality*, 28 Bom 66
  - (n) *Srilal v Lister Antiseptic Co*, 52 Cal 802, *In re New Fleming spinning and Weaving Co*, 3 Bom 439, 4 Bom 275
  - (n<sup>1</sup>) *Srilal v Lister Antiseptic Co*, 52 Cal 802
  - (o) *In the matter of the Jajodia Cotton Mills Ltd*, 1927 Cal 612, 31 C W N 683
  - (p) *Ram Chandra v Venkataranane*, 23 Mad 527
  - (q) *Bateman v Midwales Ry Co*, (1866) 1 L R p 499, 505



a gas company (*r*), a mining company (*s*) which are not trading companies cannot bind themselves by promote unless the power is expressly conferred on them by their charter or Articles of Association

In a trading partnership one partner has an implied authority to bind the others by signing or endorsing notes and bills (*s*<sup>1</sup>)

**27.** Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal

An authority to draw bills of exchange does not of itself import an authority to indorse

## NOTES

The present section deals with the question of authority of one person to enter into a contract on behalf of another so as to bind him (*t*). The scope of this section is to be distinguished from that of section 26 which deals with the capacity, *i.e.* the lawful power, of one person to contract to bind himself. The *authority* dealt with in the present section is the act of parties while *capacity* is a creation of law. The authority referred to in this section must be the authority of a person capable of contracting within the meaning of section 26 so as to bind him. Want of capacity is incurable while want of authority can be cured by ratification (*u*). The previous section deals with the legal competence of the principal to contract to bind himself and the want of capacity will make the whole contract void, while the present section deals with the power given to the agent to enter into a contract

(*r*) *In Re New Fleming Spinning & Weaving Co.*, 3 Bom 439, 4 Bom 275; *Chitrashala Press v Gajanan*, 24 Bom. L.R 355, 67 I.C 941.

(*s*) *Brahma v Roberts*, (1837) 3 Bing Nc. 963.

(*s*<sup>1</sup>) *Banarasi v Golam*, 13 MIA 358

(*t*) *Manchersha v. Govind*, 32 Bom. L.R 1035.

(*u*) *Chalmers* (9th Ed.) p 70

on behalf of a principal so as to bind the latter. Any defect in, or the total absence of, such authority can be cured by the principal ratifying the contract made by the agent. While the principal must have the capacity to contract, the agent need not have such capacity as he is a mere instrument for bringing the principal into legal relationship with third parties. A minor or an insolvent or ward of court *ie* persons who are disqualified to contract on their own behalf, may act as an agent of the principal (*v*)

**Agent:—**An agent is a person employed to do an act for another, or to represent another in his dealings with third persons (*w*). A person who is competent to do an act himself may as well have it done by an agent. Thus, a person may authorise another to execute a promissory note for him and it is valid although he does not put his mark thereto (*x*) if the agent has authority to sign (*y*). An agent may put his own signature on the instrument making it clear that he does so on behalf of the principal (*z*). As pointed out before, any person including those who are incapable of contracting themselves (*a*) can become an agent.

An agency may be created by express words, written or spoken, or it may be implied from the circumstances of the case (*b*), or from the established custom of a trade (*c*). The authority of an agent may be general or special (*d*). In the case of special agency the agent is circumscribed by the limits of actual authority (*e*). In the case of general agency the principal is bound by all the acts done by the agent in course of his employment provided they are within the scope of general authority even if such acts be against the private instructions of the principal (*f*). When the authority is expressly conferred in writing such authority should be strictly construed (*g*).

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- (*v*) *Palaniappa v Shunmugam*, 41 Mad 815, 8 LW 317, 35 MLJ 90, 24 MLT 51, 49 IC 23
  - (*w*) Indian contract Act, Sec 182
  - (*x*) *Balayya v Subbyya*, 40 Mad 1171
  - (*y*) *Joges v Mahamad*, 57 Cal 595, 1930 Cal 697, 129 IC 305
  - (*z*) *Suba v Ramasami*, 30 Mad 88, 1 MLT 377; 16 MLJ 508 (FB)
  - (*a*) *Palaniappa v Shunmugam*, 41 Mad 815, 8 LW 317 et seque
  - (*b*) Indian Contract Act, Sec 187, *Bank of Bengal v Ramanathan*, 43 Cal 527 (PC), *Pestonjee v Gool Mahammed*, 7 MHC R 367
  - (*c*) *Motilal v Unao Commercial Bank*, 59 MLJ 661 (PC)
  - (*d*) *Vekataraman v Narasinga*, 38 Mad 134
  - (*e*) *Fenn v Harrison*, (1790) 3 TR 757
  - (*f*) *Brynt Powers v Bankque*, (1893) AC 170
  - (*g*) *Ghasharam v Raja Muhun*, 6 CLJ 639, *Jamuna v Ekford* 9 Cal 1, *Palaniappa v Arinmachelian*, 23 MLJ 595, *Krishnan v Raman*, 39 Mad 918

Where the payee of a note gave a power of attorney to an agent to sell, endorse or to assign, it was held that the agent had authority to endorse away the note by way of security for a loan made to him (*h*). An agent who has authority to draw a bill has not necessarily the authority to endorse or accept it (*i*). A power to discharge or satisfy a debt does not carry with it power to execute or endorse a note (*j*). But a power to sign notes jointly with others implies a power to make a note for accommodation of another (*k*).

A general power as to management and to do all lawful acts of all kinds (*l*) or to act as a mercantile agent (*m*) does not authorise the agent to draw bills or endorse them for his principal as being outside the scope of his employment. General power given to the manager of a silk factory does not authorise him to draw or accept notes for the company (*n*). Though the title of the endorsee depends upon the authority of the agent endorsing the instrument, it cannot be made to depend upon the purposes for which the agent performs his act under the power (*o*).

**Acting in his name:**—Having regard to the prevalence of benami transactions in this country, that is, to the practice of acquiring property or rights in the name of another the use of the words 'entitled in his own name,' in the definition of 'holder' is most significant and they were inserted by the legislature for the purpose of preventing any one from claiming the rights of a holder under the Act on the ground that the ostensible holder was a mere benamdar. In the case of instruments intended to be negotiable and to pass from hand to hand, usage and policy alike required that the real contract should appear on the face of the instrument (*o*<sup>1</sup>). Therefore, the name of the principal must be disclosed in the instrument and the agent should affix his signature on behalf of the principal to avoid his personal liability (*p*). An undisclosed principal is not recognised in the

- (*h*) *Bank of Bengal v McLeod*, 5 MIA 1, *Bank of Bengal v Fagan*, 5 MIA 27, *Bank of Bengal v Ramnathan*, 43 Cal 527 (P.C.).
- (*i*) *Sanka Krishnamurthi v Bank of Burma*, 35 Mad. 692.
- (*j*) *Sonson v Addi Rajah*, (1864) 2 MHC R 177.
- (*k*) *Bank of Rangoon v Somasundaram*, 8 Bur LTI 26 IC 253.
- (*l*) *Satya v Gobinda*, 14 CWN 414, *Ram v Banwari*, 1938 Lah 41 171 IC 412.
- (*m*) *Pestonji v Gool Mahamad* 7 MHC R 369.
- (*n*) *Ferguson v Umchand*, 33 Cal 343.
- (*o*) *Bank of Bengal v McLeod*, 5 MIA 1, *Bank of Bengal v Fagan*, 5 MIA 27.
- (*o*<sup>1</sup>) *Suba v Ramasami*, 30 Mad 88, 16 MLJ 508; 1 M.L.T 377 (FB).
- (*p*) *Nasibullah v Ananda Singh*, 42 All 642; 18 A.L.J. 831, 57 IC 45, *Bankidas v Tarabai*, 1929 Nag 274, 118 IC 673.

case of a negotiable instrument (*q*) Where a note is executed or endorsed by an agent on behalf of a principal who is specifically mentioned in the instrument as liable, the principal alone is liable (*r*) If the principal is not mentioned in the instrument as the person liable, the note cannot be enforced against him and the agent will be personally liable (*s*) The name of the person or firm to be charged upon a negotiable instrument should be clearly stated on the face or on the back of the document It is not sufficient that the principal's name should be in some way disclosed, it must be disclosed in such a way that on any fair interpretation of the document he appears as the real person liable on it So where a promote was executed by R described as the son of P who with the other members of the family constituted a joint family firm and there was no reference to the firm of P, the firm was not made liable (*t*) Unless an executant of a promote clearly indicates thereon, either by an addition to his signature or otherwise, that he executes it as an agent of another or that he does not intend thereby to incur personal responsibility he is personally liable Merely describing oneself in the note as the holder of a power of attorney from another does not shew that the power included a power to sign promotes or that the note was signed in pursuance of the power (*t*<sup>1</sup>) The agent may put his own signature on the instrument making it clear that he does so on behalf of the principal and the latter alone will be bound (*u*) Instead of the name of the principal the agent may according to the prevailing practice, use the name of the firm over his signature indicating that the transactions are those of the firm (*v*) But the mere addition of the words 'agent' or 'manager' or 'Secretary' or 'Managing proprietor' or 'Superintendent of Treasury' after the signature is insufficient to exclude the personal liability of the signatory as they are merely to be

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- (*q*) *Sadsuk v Kishen Prasad*, 46 Cal 663, 36 MLJ 429, 10 LW 143, 50 IC 216 (PC), *Sitaram v Chemandas*, 52 Bom 640, 13 Bom LR 1300, 1928 Bom 516, *Bankidas v Tarabai*, 1929 Nag 274, 118 IC 673, *Suba v Ramasami*, 30 Mad 88, 16 MLJ 508, 1 MLT 377 (FB), *Ashutosh v Protiva*, 43 CWN 399, *Raghu v Ram*, 1939 PWN 178
- (*r*) *Moolchand v Mulchand*, 1923 Lah 197; 4 Lah 142, 71 IC 951
- (*s*) *Durga v Kali*, 64 IC 742
- (*t*) *P Chattyar v Munyandi*, 10 Rang 257, 1932 Rang 97, 139 IC 460, *Mahadebaram v Jagannath*, 1942 Pat 337 201 IC 496
- (*t*<sup>1</sup>) *Koneti v Gopal*, 38 Mad 482, *Aiythura v Dharma Siva*, 1 MWN 143, 25 MLJ 425, 21 IC 417, *Govindan v Nana*, 27 MLJ 595
- (*u*) *Suba v Ramsami*, 30 Mad 88, 1 MLT 377, 16 MLJ 538 (FB)
- (*v*) *Muthar v Khadar*, 28 M 544, *Mangu Mah v ALV RCT Firm*, 1917 MWN 344; 4 MLJ 309, *S Chetty firm v Manuckam*, 1933 Rang 265; 145 IC 573

regarded as *designatio personæ* (*w*) Where a note ran as "I the undersigned promise to pay, etc., 'and was signed by a person described as agent of another, or where a trustee borrowed money on his personal security for a temple it was held that he was personally liable (*x*) Where the directors of a company executed a negotiable instrument on behalf of the company adding to their signatures the word 'Directors' it was held that they were personally liable and the stamp of the company at the top did not shew that it was signed in a representative character (*y*)

Even if an executant described himself as the managing director in the body of the note but affixed his signature without describing himself as such, he was held personally liable (*z*) Similarly, guardians, trustees or managers cannot bind their wards or the trust properties by notes signed by them (*z*<sup>1</sup>)

If two or more persons are authorised to bind their principal by their joint action all of them must sign in order to bind the principal (*a*)

It has been stated before that an undisclosed principal has no place in the Negotiable Instruments Act Therefore, in an action on a bill of exchange or a promote a person whose name properly appears as party to the instrument cannot shew that he was in reality acting for an undisclosed principal (*b*) The

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- (*w*) *Sitaram v Chumandas*, 52 Bom 640, 30 Bom LR 1300, 1928 Bom 516; *In the matter of Jogdia Cotton Mills* 1927 Cal 612, 31 CWN 683, *Syam Sundar v Tittagar Paper Mills*, 1928 Cal 123; 43 CLJ 566, 32 CWN 125, 106 IC 848, *Sadsuk v Kishen Prasad*, 46 Cal 663, 36 MLJ 429, 10 LW 143, 46 IA 33, 50 IC 216 (PC), *Dutton v Marsh*, (1871) LR 6 QB 361
- (*x*) *Dhirendra v Nut Behari*, 37 CWN 296, 1933 Cal 660; 146 IC 928, *Swaminatha v Srinivasa*, 32 MLJ 259, *Thiruvengadasami v Veera*, 30 IC 778
- (*y*) *Syam Sundar v Tittagarh Paper Mills*, 1928 Cal 123, 46 CLJ 566, 32 CWN 125; 106 IC 848, *Damodar v Ramnath*, 34 Bom LR 1327 But see 24 Bom LR 355, 67 IC 941. *Probodh v Jatindra*, 1940 Cal 177 70 CLJ 307
- (*z*) *Ibid*
- (*z*<sup>1</sup>) *Waghela v Musludin*, 11 Bom 551 (PC), *Surendra v Atul*, 34 Cal 892, *Bhowal v Bajmath*, 35 Cal 320, *Mir Sarwarjan v Fakruddin*, 39 Cal 232 (PC), *Durasami v Muthial* 31 Mad 458, *Krishna Murthi v Bank of Burma*, 35 Mad 692, *Keshava v Balaji*, 34 Bom LR 996, *Sankar v Nathu*, 34 Bom LR 1001, *Ma Hnt v Hashim*, 38 MLJ 353, 32 CLJ 214 (PC), *Amwahu v Namagari*, 38 MLJ 631, *Hari v Surendra*, 41 CLJ 535, *Nanhe v Doulat*, 2 IC 408
- (*a*) *Ducarry v Gill*, (1830) LR 4, C & P 121
- (*b*) *Sadsuk v Kishen Prasad*, 46 Cal 663, 36 MLJ 429, 29 CLJ 340; 23 CWN 937, 10 LW 143, 50 IC 216 (PC), *Sitaram v Chemandas*, 52 Bom 640; 13 Bom LR 1300, 1928 Bom 516, *Bankidas v Tarabai*, 1929 Nag 274, 118 IC 673

provisions of the Indian Contract Act do not alter the rule as to negotiable instrument as, having regard to the fact that these instruments are in constant circulation like cash, it would be dangerous to allow a party to shew that he is not, but an undisclosed principal is, bound by it (c) It will introduce the dangerous element of uncertainty prejudicially affecting trade and commerce But where an agent is induced to sign on the representation that the principal (not disclosed) will alone be liable, he will not be personally liable to the person who so induced him although his liability to a bona fide holder for value continues Where, however, a promisor executed a promote with the object of concealing the debt of a third party and thereby deceiving the promisee, it was held that the promisee did not induce the promisor to believe that he would not be liable Upon the written contract the plaintiff was entitled, under section 28 of the Act to sue the defendant upon the note (d)

**Agent liable when without authority:**—The agent should act within the scope of the authority conferred on him If he acts without authority or in excess of the authority conferred on him his act is wholly inoperative unless it is ratified by the principal or unless the person against whom it is to be enforced is estopped from questioning the authority If the agent acts within his apparent authority but abuses it, his abuse of authority will not affect a bona fide holder (e) Malafides of an agent will not affect a holder in due course but will affect a holder with notice (f) Where authority is exceeded the signature is wholly inoperative and the payee cannot recover from the principal even the amount for which the agent had authority (g)

**Partnership:**—It is the general rule relating to negotiable instruments that the name of the party to be bound by instruments must appear on such instruments either as maker, acceptor or indorser (g<sup>1</sup>) To this general rule there are exceptions Thus a person is bound as a party to a negotiable instrument though he has not signed it as such, as where a person is a partner in a firm and the name of the firm appears on the bill or note Under the provisions of the Indian Contract Act the signature of the firm is deemed to be the signature of all the

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(c) *Ibid*

(d) *National Bank v Bansidhar*, 34 CWN 145, 1929 (PC) 297, 51 CLJ 56; 121 IC 193, 57 IA 1

(e) *Bank of Bengal v Fagan*, 5 MIA 27, *Bunarsee Das v Ghulam Hossein*, 13 MIA 358

(f) *Ibid*

(g) *Premabai v Brown*, 10 BHCR 319

(g<sup>1</sup>) *Mahadebaram v Jagannath*, 1942 Pat 337 201 IC 496

partners including dormant and secret ones and all partners are liable under the bill or the note (*h*) Each partner has a general authority to raise funds and do all acts necessary for and incidental to the carrying on of the partnership business (*i*) Therefore, when one partner, for such purpose, signs *as such* in the ordinary course of business, or the name of the firm appears on the face of the bill the firm is liable (*i*<sup>1</sup>) but if the partner does not sign *as such* or the firm's name does not appear on the face of the bill the firm is not liable even though the bill is drawn up for the benefit of the firm (*j*) Everyone of the partners in a mercantile firm of ordinary trading partnership is liable upon a bill drawn by a partner in the recognised trading name of the firm for a transaction incidental to the business of the firm, although his name does not appear on the face of the instrument and although he is a sleeping and a secret partner (*k*) Each partner of a trading firm has a *prima-facie* authority to bind his co-partners by drawing, accepting or endorsing a negotiable instrument even though it is not done for the partnership (*l*) and the partners will be bound even when such implied authority has been cancelled but not to the knowledge of the transferee or holder (*m*) No such indorsement made in fraud of the co-partners and that too to the knowledge of the holder will bind the firm (*m*<sup>1</sup>) But a partner has no such implied authority in a non-trading firm, *e.g.*, a railway company, a gas company, a firm of solicitors or auctioneers, a mining company Their partners have no implied authority to draw, accept, or indorse negotiable instruments unless expressly authorised to do so on behalf of the firm (*n*) A banking company is a trading firm (*o*)

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- (*h*) Indian Contract Act Secs 245, 246, Indian Partnership Act IX of 1832, Sec 18
- (*i*) *Ibid*, Sec 152, Sec 19 (1)
- (*i*<sup>1</sup>) *Bunarsee Das v Goham Hossain*, 13 MIA 358, *Chunilal v Spences Hotel*, IBLR 14, *Gordhandas v Raghuvir*, 34 Bom LR 1137, 1932 Bom 539; *Mauing Pe v Torngoo Timber Co*, 10 Rang 204, 1932 Rang 118, 138 IC 210, *Saremal v Kapurchand*, 48 Bom 176, 1924 Bom 260, 76 IC 548
- (*j*) *Somasundaram v Krishnamurthi*, 17 MLJ 126, *Shabaranbasappa v Rachappa*, 1933 Bom. 1101, 142 IC 837
- (*k*) *Bunarsee Das v Goham Hossain*, 13 MIA 358, 59 MLJ 661 (PC), *Bank of Bengal v Fagan*, 5 MIA 27, *Solthomal v Pohmal*, 13 IC 255, 9 Bom LR 274, 5 SLR 168
- (*l*) *Krishna Murthi v Bank of Burma*, 35 Mad 692
- (*m*) *Motilal v Lenao Commercial Bank*, 1930 PC 238
- (*m*<sup>1</sup>) *Solehamal v Pahmal*, 13 IC 255; 5 SLR 168, 9 Bom LR 274
- (*n*) *Mahabir v Amla Prasad*, 46 All 364, *The Official Assignee of Madras v Palamappa*, 41 Mad 824, *Raghunathji v The Bank of Bombay*, 34 Bom. 72, *Gavde v Hosmani*, 47 Bom. 637
- (*o*) *Bank of Bengal v Fagan*, 5 MIA 27

A pronote was executed by two out of three partners. They did not sign the note as partners of the firm but the liability of the firm was disclosed in the note. Even there, the firm was not bound and the partner who had not joined was not made liable (*p*)

In some other cases it has been held that the agency need not be disclosed in the signature if the name of the firm is sufficiently disclosed in the body of the instrument (*q*)

The liability of the partners is joint, and not joint and several, and no partner can bind the firm by a joint and several note without the consent of the other partners (*r*). But under section 25 of the Indian Partnership Act (Act IX of 1932) every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. But the partners of a trading firm can enter into an agreement between them by which one or more partners have no power to make or endorse notes in the name of the firm although such agreement will not affect the rights of a bona fide holder for value without notice (*r*<sup>1</sup>)

It may be noted that though, in the absence of any indication to bind the firm, the firm is not liable on a note executed by one partner in his name alone, the other partners of the firm will be personally liable, not on the note, but, on the consideration, when the debt is for price of goods supplied to the firm (*s*)

**Joint Hindu family:**—The manager of a joint Hindu family is not its agent but represents the family in all its dealings with outsiders and on a negotiable instrument drawn by its manager the other members would be liable (*t*). It is another exception to the rule of undisclosed principal not being bound (*u*) and the rule is founded on Hindu Law and not on the law of agency (*v*). When the debt is incurred for family purposes a pronote by the manager will bind other members who cannot

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- (*p*) *Sadsuk v Kishen Prasad*, 46 Cal 663 (PC); 46 IA 33, 50 IC 216 etc., *Pattabrami v Kamiseti*, 1928 Mad 1196; 55 MLJ 574, 1928 MWN 698
- (*q*) *Jogesh v Mahamad*, 57 Cal 695, *Pattabrami v Kamiseti*, 55 Mad LJ 574, 1928 MWN 698, 1928 Mad 1196
- (*r*) *Laksmishankar v Nishnuram and Ors*, 24 Bom 77
- (*r*<sup>1</sup>) Indian Partnership Act, IX of 1932, Section 20
- (*s*) *Daraga v Ramapralapu*, 25 Mad 580
- (*t*) *Krishnananda v Rajaram*, 44 All 393, 20 ALJ 233, 66 IC 150, 1922 All 116
- (*u*) *Tikamchand v Sudarsan*, 1933 Pat 263, 144 IC 325, 141 PLT 623
- (*v*) *Raghunath v Sri Narain*, 45 All 434, 73 IC 1018, 1923, All 423, *Kalyanasundaram v Ramasami*, 31 IC 317



plead want of authority of the manager (*w*), but the liability of other members is not personal and extends only to their share in the family property (*x*). To make the other members liable on the negotiable instrument itself drawn by the manager the claim should be founded also on the original debt and not only on the promissory note as such (*y*). If, therefore, the original debt is time-barred but not the note, it is submitted, money will not be recoverable from the other members. In the light of these decisions it was held that the indorsee of a note executed by the managing member could not recover from the other members as indorsement was not assignment of actionable claim (*z*). But since then it has been held that such an indorsee can recover from the other members if the debt has been incurred for the family and the onus of proving the existence of family necessity, but not the actual application of the money, lies on the plaintiff (*a*). The manager must be acting as such, but if he has ceased to act as such he cannot bind the other members by acknowledging a time-barred debt (*b*). The term 'Karta' means head and, therefore, the eldest in the family. If, therefore, the executant is a younger member, the other members will not be bound in the absence of proof of his express or implied authority to sign on behalf of the family (*c*). It is to be observed that the views set forth above are not wholly reconcilable. If the other members of the family are to be made liable on the original debt and not on the note as such, then certainly the indorsee of such an instrument cannot recover anything from the other members as indorsee, unless, of course, indorsement means assignment of an actionable claim.

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- (*w*) *Krishnananda v Rajaram*, 44 All 393, 20 ALJ 233, 66 IC 150, 1922 All 116, *Bhagawan v Bakshi*, 1933 Lah 494; *Vithal v Vithal*, 25 Bom LR 151, 1923 Bom 244, 72 IC 242, *Ram Gopal v Dhendra*, 54 Cal 380, 1927 Cal 376, 101 IC 573, *Birkeshwar v Ram Lochan*, 1934 Pat 629, *Raghur v Nanak*, 1927 Oudh 528, 105 IC 421
- (*x*) *Murali v Ghudumal*, 1933 Lah 1018, *Official Assignee v Palaniappa*, 41 Mad 824, *Chellamayya v Varadayya*, 22 Mad 166; 9 MLJ 3, *Thakur v Ajodhya*, 1939 Pat 490 180 IC 365
- (*y*) *Ram Gopal v Dhendra*, 54 Cal 380, 1927 Cal 376, 101 IC 573, *Manchersha v Govinda*, 32 Bom LR 1035, 1930 B 424, *Hari v Sourindra*, 1925 Cal 1153, 88 IC 1025, 41 CLJ 535, *Birkishar v Ram Lochan*, 1934 Pat 629
- (*z*) *Shrimuganatha v Srinivasa*, 40 Mad 727, *Seetharama v Seshiah*, 1912 MWN 1011, 17 IC 417
- (*a*) *Nataraja v Aiyasami*, 32 MLJ 354, 5 LW 410, *Bajinath v Bindu*,  
 (*b*) *Kothandara v Arunachella*, 32 IC 997  
 1939 Pat 97 180 IC 147
- (*c*) *Rama Pattar v Viswanath*, 45 Mad 345, 1922 Mad 23, 15 LW 130, *Krishna v Kdshnamurthi*, 23 Mad 597 (But see 54 Cal 380, 1927 Cal 376, 101 IC 573)

The manager has authority to incur debt on behalf of the family even though he may have drawn the bill or note unconnected with family business or in fraud thereof (*d*) and the minor members of the family are also liable for the same (*e*). But where the manager executes the note in his own name and not in the name of the firm the other members cannot be made liable on it in the absence of proof that the money was required for the benefit of the family or for family business (*f*).

**Miscellaneous:**—The ordinary law of agency laid down in section 226 of the Indian Contract Act is applicable to negotiable instruments (*g*). A trustee of a temple or mutt is not an agent contemplated under this section and a person who executes a note as a trustee is personally liable on it as he executes it on behalf of a principal who is incapable of entering into a contract (*h*). A loan incurred on personal security for the purpose of a mutt cannot be charged against the trust property but remains a personal debt (*i*). Nor, when a trustee borrows money for the benefit of the mutt without consulting his co-trustees, can the same be recovered from the mutt property (*j*). The head of a mutt who has not contracted himself out of personal liability is personally liable for the loan although he describes himself as such head (*k*). When the Karnavan of a Tarwad does not sign a note as Karnavan no decree can be passed against the Tarwad property (*l*) unless the note is executed for necessity and the same is alleged and proved (*m*).

Guardians of minors are agents contemplated under this section (*n*) and, therefore, can act for a principal who is incapable of entering into a contract. Under the Hindu law, a guardian can bind the minor for a debt incurred for family

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- (*d*) *Raghunathji v Bank of Bombay*, 34 Bom 72, 11 Bom LR 255, 2 IC 173, *Mehla v Bhola*, 9 Lah LJ 186, 102 IC 395, 34 All 135, *Krishnamurthi v Bank of Burma*, 35 Mad 692
- (*e*) *Ibid; Bhagawan v Bakshiram*, 1933 Lah 494 149 IC 556
- (*f*) *Majid v Saraswati*, 38 Bom LR 225, 1934 ALJ 79, 66 MLJ 65 (PC)
- (*g*) *Balayya v Subbayya*, 40 Mad 1171
- (*h*) *Palaniappa v Shanmugam*, 41 Mad 815, 35 MLJ 90, 8 LW 317; 48 IC 23
- (*i*) *Samnatha v Srinivasa*, 32 MLJ 259, 5 LW 323, 1927 MWN 278, 38 IC 172, *Balavenkataram v Maruthamurthi*, 1943 Mad 247; 207 IC 382
- (*j*) *Thiruvengadasami v Veera Pillai*, 30 IC 778
- (*k*) *Kasiva v Venkata*, 26 IC 356
- (*l*) *Govinda v Nanu*, 27 MLJ 595, 1914 MWN 782, 26 IC 750
- (*m*) *Thanakammal v Kunhamma*, 37 MLJ 369, 53 IC 868
- (*n*) *Sabbamma v Subbarayada*, 50 MLJ 125, 1926 Mad 390, 92 IC 805 (But see 39 Mad 915)

necessity or for his benefit (o) The question of the personal liability of a guardian will depend on whether he has definitely and unequivocally excluded his personal responsibility by appropriate words in the instrument itself (p) Thus, where for the minor's father's debt, a guardian executes a note stating 'I shall pay' he is personally liable (q) If the guardian has not executed the note as a guardian the court has no right to go into that question (r)

**28.** An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable

### NOTES

A negotiable instrument must be free from all kinds of uncertainty and should on the face of the instrument shew who are liable on it (s) The name of the person or firm to be charged upon a negotiable instrument must be so stated in the document itself as to make it clear on any fair interpretation thereof that he is the person liable on it (t) Where the maker of the instrument does not indicate that he has signed as an agent nor is there anything to shew in the body of the document itself that the executant did not thereby incur personal liability, the executant is personally liable (u) The section applies to instruments written in English as also in

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- (o) *Kameswara v Veerachariu*, 34 Mad 422, *Doraisami v Muthura*, 31 Mad 458, *Bechu v Baldeo*, 1932 Oudh 832, 141 IC 180, *Subramania v Armugham*, 26 Mad 330
- (p) *Sabapathi v Manuckammal*, 1926 Mad 447, 91 IC 879
- (q) *Mathasami v Somasundara*, 53 MLJ 814, 1927 Mad 1018, 105 IC 877, *Subbama v Subbarayada*, 50 MLJ 125, 1926 Mad 390, 92 IC 805
- (r) *Nanhie v Dowlat*, 2 IC 403
- (s) *Koneti v Gopala*, 38 Mad 482, *Sadsuk v Kishen Prasad*, 46 Cal 663 (PC), 23 CWN 937, *Balanappachettiar v Shammugan Chettiar*, 41 Mad 815, *Damodu v Ramnath*, 1932 Beng 607
- (t) *Sadsuk v Kishen Prasad*, 23 CWN 937, 46 Cal 663; 29 CLJ 340, 50 IC 216, 17 ALJ 405, 36 MLJ 429, 21 Bom LR 605, I UPLR (PC) 37, *Asutosh v Prativa*, 43 CWN 399, *Chandan v Krishna*, 1944 Oudh 273 20 Luck 1
- (u) *Durga Prasad v Kalicharan*, 64 IC 742, *Rama v Ananthi*, (1950) 2 MLT 636

Vernaculars (*v*) What the section requires, to avoid his personal liability, is only an indication, not in the signature, but anywhere in the body of the instrument, that the executant signs as an agent of a named principal (*w*) The words should be sufficiently unequivocal to indicate that the agent has not made himself personally liable (*x*) Mere addition of the word 'agent' over his signature will not exclude personal liability as it is a mere description (*y*) The usual test is if the form of the instrument necessarily implies that the agent did not intend to incur personal liability (*z*)

Where a person induces an agent to sign an instrument in a form which does not clearly exclude personal liability he is estopped from taking advantage of his own act and from making the agent personally liable Such inducement must be clear (*a*)

The section has no application where the suit is brought on the original consideration and not on the promote and in such a case the suit will be maintainable against the principal as well (*b*)

(For further details of agent's liability see notes under section 27)

## 29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally

Liability of legal representative signing

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- (*v*) *Venkatanarayana v Venkatanarasimha*, 1913 MWN 1005, 14 MLT 502
  - (*w*) *Koneti v Gopala*, 23 MLJ 417, 1912 MWN 984, 12 MLT 367, 38 Mad 482 (FB)
  - (*x*) *Subbama v Subbarayad*, 50 MLJ 125, 1926 Mad 390, 92 IC 805, *Muthusami v Somasundara*, 53 MLJ 814, 1927 Mad 1018, 105 IC 877, 4 Rang 551
  - (*y*) *Sadsuk v Kishen Prasad*, 46 Cal 663, 36 MLJ 429, 29 CLJ 340, 23 CWN 937, 10 LW 143, 50 IC 216 (PC), *Sitaram v Chemendas*, 52 Bom 640, 13 BomLR 1300, 1928 Bom 516, *Bankidas v Tarabai*, 1929 Nag 274, 118 IC 673
  - (*z*) *Veeraivan v Ponnusami*, 36 Mad 362, *Siva v Padma*, 1941 Mad 417 195 IC 561 (FB)
  - (*a*) *National Bank v Bansidhar*, 57 IA 1, 5 Lah 1, 8 LW 622, 34 CWN 145, 51 CLJ 56, 1929 (PC) 297, 121 IC 193
  - (*b*) *Sadsuk v Kishen Prasad*, 46 Cal 663, 36 MLJ 429, 29 CLJ 340, 23 CWN 937, 10 LW 143, 50 IC 216 (PC), *Subbama v Subbarayad*, 50 MLHJ 125, 1926 Mad 390, 92 IC 805; *Venkatachalapati v Ramkrishnayya*, 1930 Mad 168

thereon unless he expressly limits his liability to the extent of the assets received by him as such

## NOTES

This section deals with the liability of legal representatives (c) on a negotiable instrument. The language of this section is different from that of section 28 in that there must be express words limiting the liability and such liability can only be limited to the extent of the assets of the deceased in their hands. Where section 29 specifically applies to a given set of facts the principle of section 28 cannot be invoked. The position of the agent under section 28 is better than that of the legal representatives in section 29. Under section 28 it is sufficient to indicate that personal liability is excluded, i.e. the agent's liability may be altogether excluded, while under section 29 it can be limited only to the extent of the assets of the deceased in their hands and that too can only be done by express words. Their liability cannot be excluded altogether (d). But in the absence of express words limiting the liability to the assets of the deceased in their hands, the legal representatives will be personally liable. They must definitely exclude their own liability (e). Merely signing as executor does not take away his personal liability as the word executor is only descriptive or decorative (f). Where a promote is not signed by an executor as such no decree can be passed against the estate and the executor will be only personally bound (g). In the absence of necessity to borrow for the Estate the executor cannot bind the estate (h). A Hindu widow having a limited estate is the legal representative of the deceased husband and can endorse a note standing in his favour to pass a good title to the indorsee (i). If the holder once chooses to sue the defendant as executor he cannot enforce personal liability (j).

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(c) For definition see C P Code Section 2 (11)

(d) *Subbama v Subbarayad*, 50 MLJ 125, 1926 Mad 390, 92 IC 805

(e) *Ibid*

(f) *Hirnbhoy v Ratan Bai*, 1933 Bom 444, 35 Bom LR 969, 146 IC 979

(g) *Ammaku v Parvathi*, 43 IC 760, 33 MLJ 631; 6 LW 722

(h) *Anant Ram v National Bank*, 1922 Oudh 20, 66 IC 116

(i) *Gopala v Venkatakrishna*, 26 MLJ 224, *Monmohini v Secretary of State*, 22 WR 106, 13 BLR 359, *Bidyasundari v Asutosh*, 15 WR 267

(j) *Pestonji v Meherbai*, 30 Bom LR 1407

**30.** The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided

### NOTES

The drawer of a bill of exchange or cheque is the original promisor. The promise he makes is to the effect that in case the drawee or the acceptor dishonours the bill or the cheque *ie* if he refuses acceptance or payment then the holder will not suffer in any way but will be able to recover the amount from him. This also governs the drawer of a hundi who becomes liable as principal debtor after the instrument has been dishonoured either by non-acceptance or non-payment (*j*<sup>1</sup>). But in the case of a Namjog hundi the liability of the drawer arises after dishonour provided the hundi is returned to him in an undischarged state (*j*<sup>2</sup>). This section lays down the formality the holder has to observe before he can enforce payment from the drawee. The drawer must have due notice of dishonour under section 93 (post)

**Notice absolutely necessary:**—The notice of dishonour to the drawer is absolutely necessary, and until and unless it is given, the holder has no cause of action against him (*k*). Such notice must be proved by the holder unless he can come within any of the exceptions under section 98 (*post*) dispensing with the service of such notice (*l*). Neglect to serve this notice will absolutely discharge the drawer from liability (*m*). Subject to local usage to the contrary, the principle of this section is applicable to hundis as well (*n*). The notice must be immediate notice (*o*). Instead of the holder, if anybody else, liable under the instrument, has given notice to the drawer the holder can utilise that notice.

**Parties to suit:**—If the drawee has accepted, the holder

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- (*j*<sup>1</sup>) *Dalsukh v Matlal*, 1938 Nag 262, I L R (1940) Nag 502, 182 I C 842
  - (*j*<sup>2</sup>) *Lallubhai v Ratan*, 1940 Bom 82, 41 Bom L R 1237, 187 I C 419
  - (*k*) *Mulchand v Suganchand*, 1 Bom 23, *Ram Ravan v Prolhaddas*, 20 Bom 133, *Miller v National Bank of India*, 19 Cal 146, *Ameruddi v Bahadur*, 30 Cal 977, 7 C W N 878, *Ahmed v Chembhalli*, 1951 Cal 262
  - (*l*) *Verappa v Vellayan*, 1919 M W N 780, *Jambu v Sundaraja*, 26 Mad 239, *Amiruddi v Bahadur*, 30 Cal 977, 7 C W N 787
  - (*m*) *Bahadur Chand v Goluk Rai*, 11 Lah 34, 1929 Lah 577
  - (*n*) *Ram v Prolhaddas*, 20 Bom 133, *Moti v Moti*, 6 All 78
  - (*o*) *Megraj v Gakuldas*, 7 B H C R. 137

may proceed against either the drawer or the drawee or against both (*p*) If the drawee does not accept, the holder can proceed against the drawer alone (*q*) Where both the drawer and the acceptor are liable, in a suit against the drawer, he can plead neither that the holder's remedy against the acceptor is time-barred (*r*) nor that the holder has got a decree against the acceptor when the decree has not been satisfied (*s*) In a suit by the holder the drawer cannot be heard to say that the bill had been discounted before maturity by the acceptor and re-issued by him (*t*) But if he proves that the bill was with the acceptor at maturity and was delivered by him to the plaintiff after it became due he will be discharged from liability (*u*) The suit has to be instituted by the holder within three years from the time of refusal to accept (*v*)

**Contrary contracts:—**The liability of the drawer is subject to any special contract that may be entered into by the parties As for instance, he may contract himself out of any liability by an express stipulation in the body of the instrument as by putting the words "without recourse" or by limiting his liabilities to the assets in his hand by executing the instrument as an executor (*w*), or, he may waive the notice of dishonour or other duties imposed by the Act upon the holder (*x*) To limit the holder's *prima facie* right of recourse against the drawer, the drawer must shew that when he discounted the drafts he bargained that the transaction should be 'without recourse' or some breach of contract or duty which would have the effect in law of discharging or limiting his liability (*y*) The liability of the drawer will not be affected in any way even if a collateral security is given and lost (*z*)

**Time of dishonour:—**There now remains to be considered when does dishonour take place In case of a bill, payable on demand, the drawer, on failure of payment by the

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(*p*) *Basant v Kolahal*, 1 All 392, *Benares Bank v Parya Das*, 1930 All 106

(*q*) *Kahandas v Dahia*, 3 Bom 192

(*r*) *Jambu v Sundaraja*, 26 Mad 239

(*s*) *Pigue v Ram Jushunt*, 1 WR 95

(*t*) *Attenborough v Maekenzie*, (1856) 25 LJ Ex 244

(*u*) Sec 90 post

(*v*) Indian Limitation Act, Sch 1, Art 78

(*w*) *Kirkwood v Carrole*, (1903) 1 KB 531

(*x*) *Jambu v Sundararaja*, 26 Mad 239

(*y*) *Sassoon and Sons v International Banking Corporation*, 55 Cal 1; 32 CWN 30, 1927 (PC) 195, 54 IA 317.

(*z*) *Kahandas v Dohna*, 3 Bom 182

drawee, immediately becomes liable to the payee for the amount (a) When a bill is payable after sight it is essential that the bill should be presented for acceptance, and if on such presentment for acceptance the drawee refuses to accept it, the bill stands dishonoured (Sec 91 *post*), and no matter whether the bill has matured or not, the holder on giving notice of dishonour to the drawer can immediately proceed against him (b) But if due notice of dishonour be not served and the drawer does not otherwise get notice the mere fact that the payee of a hundi meets the drawer sometime after the maturity of the instrument and demands payment from him will not be sufficient compliance with the provisions of the Act and the drawer will not be liable (c)

In case of bills payable at or after a fixed date presentment for acceptance is not necessary before that date But if the holder presents it before maturity for acceptance and acceptance is refused by the drawer the holder becomes immediately entitled to proceed against the drawer the reason being that the holder's right of action against the drawer arises immediately on dishonour by non-acceptance (d) If after dishonour before maturity, the bill is again presented after maturity the latter course will not give rise to a separate cause of action (e) It has been held by the High Court of Allahabad that no presentment is valid unless it is made after the bill has reached maturity (f) The latter opinion, it is submitted, is more in accord with what is contemplated by section 91 which says "refuses to accept upon being duly required to accept the bill" and one cannot be *duly* required to do a thing before the time for this comes Where the acceptor of a hundi accepted it unconditionally but subsequently said that he would pay in three day's time and the holder agreed to the arrangement but did not give notice to the drawer and when afterwards the acceptor failed to make payment within three days and the holder did not give notice of dishonour to the drawer before ten days it was held that the conduct of the holder discharged the drawer from liability (g)

A member of a Hindu family whom it is sought to make liable by a surt on a hundi drawn by a manager of a family

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(a) *Ibid*

(b) *Ibid*, *Miller v National Bank*, 19 Cal 146

(c) *Sobhamal v Pohumal*, 13 IC 255, 19 LW 560

(d) *Ram Ravan v Prolhaddas*, 20 Bom 133, *Veerapa v Vellayan*, 1919 MWN 780; *Miller v National Bank*, 19 Cal 146

(e) (1842) 1 M and W 506

(f) *Jhandulal v Wilayati Begum*, 87 IC 488, 1925 All 442; 47 All 572, 23 ALJ 349

(g) *Askaran v Pir Bux*, 12 CWN 644, 8 CLJ 163



is entitled to urge want of notice upon the manager (*h*) Where there is no allegation that presentment was excused, the plaintiff must prove that the drawee was required to accept the bill and that he dishonoured it by non-acceptance (*i*)

A cheque is a revocable order to pay and before payment by the bank the drawer is competent to stop payment (*j*)

**31.** The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default

### NOTES

It is the banker that is always the drawee of a cheque This section lays down under what conditions the banker must pay the cheque The banker as the debtor of his customer is always under the obligation to honour the cheque of the latter provided

(i) he has sufficient fund of the drawer in his hand,

(ii) the fund is properly applicable to the payment of such cheque and

(iii) he is duly required to pay

If in spite of the three aforesaid conditions being fulfilled the banker defaults to make such payment he is bound to compensate the drawer for any loss or damage caused by such default (*k*) The loss or damage mentioned in the section is not only the actual pecuniary loss or damage the drawer suffers by such non-payment but it also includes the loss of business or prestige (*l*)

The relationship between the banker and his customer is that of a debtor and creditor with an additional obligation on the part of the banker to honour the cheques of his customer

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(*h*) *Krishnashet v Harwalji Bhatya*, 20 Bom 488

(*i*) *Kadappa Chetti v Trupathi Chetti*, 86 IC 576, 1925 Mad 444, *Ahmed v Chamballi*, 1951 Cal 262

(*j*) *M'Lean v Clydesdale Banking Co*, (1883) 9 App Cas 95

(*k*) *Sridhar v Tyrwhitt*, 1901 A WN 113

(*l*) *Ibid*, *Rolin v Steward*, (1854) 14 CB 595, *Fleming v. Bank of New Zealand*, (1900) A C. 577.

so long as there are assets of the latter in his hands (*m*) The contract admits of being renewed or determined at the instance of either party (*n*) Just as the banker has his obligation to perform the customer has his duty as well in that he must take reasonable care not to mislead the bank, and for any negligence on his part to discharge his duty the customer will be held responsible (*o*) But in order to make him liable for negligence, the neglect must be shewn to be intimately connected with the transaction itself and must be the proximate cause of the loss (*p*) The remedy of a holder of a cheque that has been dishonoured is against the drawer and not against the drawee who refuses payment as there is no privity of contract between the holder and the drawee (*q*) But once the banker places the amount to the credit of the payee or promises payment to the payee the latter is entitled to recover from the bank (*r*) Pass book entry may be shewn by the bank to be due to mistake unless the customer has acted on the representation so as to change his position (*s*)

**Sufficient fund:**—Generally the customer opens an account with a bank by deposit of money there and, when necessary, draws cheques upon such deposits in the bank So long as the funds in deposit are sufficient to meet the amount payable on the cheque the bank is bound to make payment But if the cheque is for amounts greater than the funds in deposit the bank is not bound to pay even the amount in its hand If, however, there is a contract between the bank and its customer to grant overdrafts the bank is bound to honour the cheque even if there is no sufficient fund (*t*) or where there are securities of the customer in the bank but not sufficient money, the bank is bound to honour a cheque if it did so on a previous occasion (*u*)

Where the bank already applied the money to the payment of customer's acceptance which was made payable at the bankers (*v*),

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- (*m*) *Dharam v Ganga*, 29 All 773, *Official Assignee of Madras v Ramchandra*, 33 Mad 134, *Bradley v Agra Bank*, 101 P R 1885
  - (*n*) *Ibid*
  - (*o*) *Official Assignee, Madras v Ram Chandra*, 33 Mad 134, *Official Assignee of Madras v Lupprian*, 34 Mad 121, *Dorabji v Muncherji*, 19 Bom 352
  - (*p*) *Ahmed Molla Dowood v Penanan Chetti*, 80 I C 261, 1924 Rang 264, 3 Bur L J 22
  - (*q*) *U B.R* 1902-03 Vol 11 Civil Neg Instruments 5
  - (*r*) *Mowji Shamji v National Bank of India*, 25 Bom 499
  - (*s*) *Ibid*
  - (*t*) *Fleming v Bank of New Zealand*, (1900) A C 577
  - (*u*) *Cumming v Shand*, (1860) 26 L J Ex 129
  - (*v*) *Kymer v Laurie*, (1849) 18 L J Q B 218

or where requisite funds were paid in the bank shortly before dishonour so that the money could not be carried into the customer's account (*w*), or if a customer having accounts in some branches of a bank draws a cheque upon a branch where there is no account (*x*) the bank will not be made liable for dishonour. Branches of the same bank in different places are distinct units and may give notice of dishonour to each other (*y*). Reasonable time should be allowed for payment as the circumstances may warrant. Thus, time is necessary for the banker to satisfy himself about the genuineness of the signature (*z*) or for ascertaining the position of the account of the customer in the bank (*z*<sup>1</sup>). Four hours have been held to be reasonable time (*z*<sup>2</sup>).

**Fund properly applicable:**—Where there is an understanding between the customer and the banker and the former contrary to such understanding draws a cheque, the payment of the cheque will not be a proper application of the fund. A trust fund should not be payable for any purpose not consistent with the objects of the trust (*a*). But the bank is not bound to enquire if the amounts drawn by the cheque are for the use of the drawer provided the cheques are drawn in proper form by the trustee (*b*). A banker should not honour a cheque or apply the balance to a particular object when he knows that by so doing he will be participating in a fraud (*b*<sup>1</sup>).

**When duly required to pay:**—This means when the cheque is presented in proper form and at proper hour by the payee. The cheque must be presented during the banking hours and not at all hours, nor on bank holidays. Payment should be made according to the priority of presentment (*b*<sup>2</sup>).

**Refusal justified:**—Besides the circumstances stated before, a bank will also be justified in refusing payment if,

(i) there is a countermand order. The order stopping payment must be clear (*c*). A telegram stopping payment

(*w*) *Roberts v Tucker*, (1851) 16 QB 560

(*x*) *Woodland v Fear*, (1857) 7 E and B 519

(*y*) *Jyotiprasad v Chota Nagpur Banking Corporation*, 8 Pat 413, *Bank of India v Offend Liquidator*, 52 Bom LR 587 1950 Bom 375

(*z*) *Mowji Shamji v National Bank of India*, 25 Bom 499, 516

(*z*<sup>1</sup>) *Roberts v Tucker*, (1851) 16 QB 560

(*z*<sup>2</sup>) *Marzetti v Williams*, (1830) 1 B and Ad 415. But see *Bank of England v Vagliano*, (1891) AC 107, 157

(*a*) *Thomson v Clydesdale Bank*, (1893) AC 282

(*b*) *Coleman v Bucks and Oxon Union Bank*, (1897) 2 Ch 243

(*b*<sup>1</sup>) *Gray v Johnston*, (1868) JLR 3 HL 1

(*b*<sup>2</sup>) *Kilsby v Williams*, (1822) 6 B and Ald 815

(*c*) *Westminster Bank v Hilton*, 1926 WN 332

entitles the bank to defer payment pending enquiry (*d*) Payment through mistake, in spite of countermand order, does not entitle the bank to a refund from the payee as in such a case there is no equitable right of restitution (*e*)

(*ii*) there is notice of customer's death which vests the fund in his legal representative (*f*) Payment before receipt of the notice of the death is, however, valid (*g*) But notice of death of one of the several partners having an account in the name of the firm will be no ground to refuse payment to other surviving partners who can operate on the account (*h*) Same principle will apply to the cases of joint accounts

(*iii*) the customer becomes a bankrupt and the bank has notice of such bankruptcy (*i*) Bankruptcy of the customer vests his property in the receiver or trustee Any payment to the customer after notice of his bankruptcy will not avail against the receiver or trustee who can successfully claim from the bank the amount so paid (*j*)

Bona fide transactions with the insolvent, after the commencement of an act of insolvency and before the presenting of the petition, are protected as notice of an act of insolvency does not *ip-so-facto* take away the protection as it does under the English law (*k*) But all transactions with the insolvent between the filing of the insolvency petition and the adjudication order will be protected if the transactions are bonafide and done without notice of the presentation of the petition of insolvency (*l*),

(*iv*) the customer becomes insane and the bank has notice of it (*m*),

(*v*) there is an order from any court prohibiting payment (*n*),

(*vi*) a post-dated cheque is presented before due date (*o*),

(*vii*) the cheque is irregular as unstamped, ambiguous or materially altered (*p*)

(*d*) *Lallamal v Keshodas*, 26 All 493

(*e*) *Punjab Industrial Agency Ltd v Mercantile Bank*, 1930 Lah 852

(*f*) *Morse on Banking*, 260

(*g*) Bill of Ex Act, See 75, In re Beaumont, (1902) 1 Ch 889

(*h*) *Backhouse v Charlton*, (1878) 8 Ch D 444

(*i*) *Mathtw v Sherwell*, (1810) 2 Taunt 439

(*j*) *Vernon v Hankey*, (1787) 2 TR 113

(*k*) *Bhagawan Das v Chutton Lal*, 43 All 427

(*l*) Secs 57 and 55 of the Presidency and Provincial Insolvency Acts

(*m*) *Drew v Nunn*, (1879) 4 QBD 661, *Daily Telegraph v Loughton*, (1904) AC 776

(*n*) *Norton v Yates*, (1906) 1 KB 112

(*o*) *Emanuel v Roberts*, (1868) 9 B and S 121

(*p*) *Ibid*

(viii) in case of joint account only one draws the cheque  
(q)

**32.** In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof, at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default

### NOTES

This section as well as section 79 post are affected and over-riden by the provincial Money Lenders Acts where there are provisions regulating payment of loans and the rate of interest thereon and where such provisions have been made applicable to loans due on any kind of negotiable instruments (q<sup>1</sup>) Provincial legislations regulating money lending and the money lenders in so far as they are made applicable to loans on a negotiable instrument are not ultra vires of the provincial legislatures (q<sup>2</sup>)

**Position of the maker:**—This section deals with the liability of the maker of a note and of the acceptor of a bill of exchange Ordinarily, the liability of a maker of a note is absolute and unconditional from the time of making of the note By executing a note in favour of a certain person and delivering the same to him the maker becomes a debtor and binds himself absolutely to make the payment to him according to the apparent tenor of the document If the maker makes the payment such payment discharges him from all liability on the note (*vide* Sec 78 *post*) When for some reason a suit cannot be based on the note the liability of the maker is not determined as, subject

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(q) (1851) 10 CB 645

(q<sup>1</sup>) *Deo Nandan v Ramprasad*, 1944 Pat 303, 23 Pat 618 (FB)

(q<sup>2</sup>) *Ibid*

to the law of limitation, the holder can sue him on the original consideration ( $q^3$ ). But does this right to sue on the original consideration subsist when a note is executed either in discharge or in partial reduction of an existing debt? A note executed for such consideration is generally regarded as a conditional payment of the debt ( $q^4$ ), and in the absence of proof to the contrary, such conditional payment only suspends the right of action which revives when the security is found worthless and this right can, subject to the law of limitation, be enforced and a suit will be maintainable on the original consideration ( $q^5$ ). But the execution of such a note being only a promise to pay cannot operate as an absolute discharge of a debt. The execution of a note in lieu of a debt does not necessarily extinguish the original debt. But if the parties treat it as an absolute payment no suit will lie on the original consideration ( $q^6$ ). In a decision of the Calcutta High Court the position is clearly and succinctly summed up. Where a cause of action for money is once complete in itself whether for goods sold or for money lent or any other claim and the debtor then gives a note to the creditor for payment of the money at a future time, the creditor, if the note is not paid at maturity, may always, as a rule, sue for the original consideration, provided he has not endorsed or lost or parted with the note under such circumstances as to make the debtor liable upon it to a third person ( $q^7$ ). The plaintiff can recover on the original consideration if the note that was executed is inadmissible in evidence on account of its being insufficiently stamped without proving any express promise to repay independently of the note as the loan itself implies a promise to repay. But the claim must be based on the consideration and not on the note ( $q^8$ ).

**Contract to the contrary:**—While in a promissory note the maker is the primary debtor and promises to pay himself, in a bill of exchange the drawer directs another to make the payment and undertakes to pay himself in case of dishonour, that is to say, the drawer takes up the position of a surety. This is the

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( $q^3$ ) *Culleanji v Rahaji*, 30 Bom 27, 6 Bom LR 879, *Abdul v Syamlal*, 34 CWN 554, *Mahalabuddin v Md Najir*, 40 CWN 473, *East Bengal Com Bank v Surendra*, 39 CWN 1235

( $q^4$ ) *Imperial Bank v Avanasri*, 1930 Mad 874, 59 MLJ 513

( $q^5$ ) *Hakim Rai v Ganga Ram*, 7 Lah 206, 1926 Lah 356, 96 IC 445, *Punjab National Bank v Tajamull*, 49 All 257; *Darga Vereppu v Rama*, 25 Mad 580, *Gopala v Rajagopala*, 1926 Mad 1148, 1926 MWN 757, 98 IC 75

( $q^6$ ) *Subramana v Chocklinga*, (1923) MWN 91, *Culleanji v Raghun*, 30 Bom 27, 6 Bom LR 879

( $q^7$ ) *Akbar v Sukhan*, 7 Cal 256

( $q^8$ ) *Mahatubuddin v Mad Najir*, 40 CWN 473, *Indra v Hiralal*, 40 CWN 696, *Sridhar v Jahar*, 49 CWN 37

ordinary rule But according to the present section a contract to the contrary may be entered into between these two parties inverting their positions and such contract may be proved in proceedings between them (r) The payee of a note if he has made a contrary contract with the maker is not entitled to sue on the note against the contract and the maker can plead that it cannot be enforced against him (s) or that the payment is to be made by instalment (t) In dealing with negotiable instruments two principles have to be borne in mind First, the moment it is admitted that the maker of a note or the acceptor of a bill made or accepted it the onus is upon him to get rid of its liability, and secondly, except under peculiar circumstances, the proof of which lies upon the defendant, a man who signs a bill is presumed to be liable for the whole amount appearing on the face of the document (u) Where, however, one person executes a promote on the faith that another will also execute it jointly with him and the latter fails to do so the former will be relieved from his liability under the note (u<sup>1</sup>).

**Position of acceptor.**—The position of the acceptor of a bill is identical with that of the maker of a note A drawee is not bound to accept a bill and no liability attaches to him so long as he does not accept (v) But once he accepts, his liability is fixed unconditionally and he undertakes to pay the amount according to the apparent tenor of the acceptance without presentment or notice of dishonour (w) His liability becomes independent of the drawer (x) whose death, or insolvency, or non-receipt of the goods, does not affect the liability of the acceptor (y) Thus, a bill of exchange against goods was accepted at Bombay before the outbreak of war but the goods were despatched in an enemy steamer which after arrival in Bombay departed to neutral port to avoid capture The bill was presented in due time and dishonoured On the Government issuing a proclamation allowing British subjects to obtain delivery of goods on enemy steamer in neutral ports the defendants were

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(r) *Bellew v Bank of Upper India Ltd*, 7 IC 727

(s) *Seikh Imam v Ishkali*, 10 IC 734, 7 NLR 39, *Annamalai v Velayuda*, 39 Mad 129, 32 IC 869, 3 LW 38, 30 MLJ 51

(t) *Nagardas v Moses*, 12 IC 896

(u) *Naserali v Kherchand*, 36 IC 996

(u<sup>1</sup>) *Sundaram v Venatappadasic*, 1940 Mad 874 194 IC 846

(v) *Banaras Bank v Parya Das*, 1930 All 106

(w) *Ghanimalal v Karamchand*, 1929 Lah 240, *Gayadin v Sri Ram*, 39 All 364, 15 ALJ 267, 39 IC 649

(x) *Motishaw v Mercantile Bank of India*, 41 Bom 566, 37 IC 258; *Radhabehari v Alexander*, 1922 Lah 353, 2 Lah 335

(y) *Motishaw v Mercantile Bank of India*, 41 Bom 566, 37 IC 258, *Bubby Hurry and Co, v Hertz and Co*, 4 Lah 215.

held liable on the bill as soon as the proclamation was issued (*z*) Acceptance means and implies that the acceptor agrees unconditionally to pay the amount and he is, therefore, not competent to prove that he has no funds of the drawer at his hand (*a*) But he can shew that the document he has accepted is not a proper document (*b*) He cannot plead want of consideration for acceptance It is sufficient if there is consideration between the drawer and the payee (*c*)

**Compensation for loss:**—According to this section the maker of a note or the acceptor of a bill is bound to compensate the holder or any other person, who may have suffered loss on account of the default, but is not bound to compensate the party in the case of an accommodation note, for whose accommodation the note is made or the bill is accepted But if the latter has supplied the maker of the note or the acceptor of the bill with sufficient fund to take the instrument at maturity he can claim compensation (*d*)

**33.** No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance

## NOTES

**Who can accept:**—A bill of exchange is an order by the drawer upon another, *i.e.*, the drawee, to pay a certain sum and, therefore, the person, upon whom the order is thus made, is the only person who can accept it and bind himself When the drawee is named in the bill a third person who is not named in the bill, that is to say, whose name does not appear in the bill as drawee, is not competent to accept and, therefore, even if a person who is not a drawee and whose name is not in the instrument accepts the bill, *i.e.*, writes the word, accepted, across the bill

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- (*z*) *Motishaw v Mercantile Bank*, 41 Bom 566, 37 I C 258, 18 Bom L R 521  
 (*a*) *Macleod v Jones*, 1926 Cal 189, 87 I C 218, *Radhabehari v Alexander*, 2 Lah 335, 1922 Lah 353, *Uthara v Muthu*, 1927 Mad 68  
 (*b*) *Gopal Chund v Sir Jacob*, 1930 Lah 640; 123 I C 118  
 (*c*) *Joges v Mahamad Ibrahim*, 57 Cal 695  
 (*d*) *Pogose v Bank of Bengal*, 3 Cal 174, 185



no liability attaches to him (e) But where no drawee is named in the instrument and it is accepted by a person, such person will be deemed to acknowledge that he is the drawee and will be held liable (f) as an acceptor for honour under section 108 *post*

**When several drawees.**—If the bill is drawn against more than one person all or some of them can accept it and the liability will be that of the person or persons who so accept and not of those who do not accept (g) The acceptance should be made in the same capacity in which he is made the drawee, otherwise, the acceptance will not be valid Thus, where a person against whom a bill of exchange is drawn by name, accepts it for or on behalf of a corporation of which he is a member there is no valid acceptance of the bill (h)

**Other acceptances:**—Where an instrument shewn to be on its face a hundi or a bill of exchange was really a pronote and was accepted by the defendants with the words “accepted payable on due date” at the top, it was held that the defendants by their acceptance admitted themselves to be drawees and so were estopped from denying liability (i) A bill drawn on A through his agent B can be accepted by A (j) A bill drawn against two or more partners as such may be accepted by any one of the said partners But for a bill drawn against a firm, if it is accepted by a partner in his own name, he will be personally liable but not the firm (k)

A person to whom the holder is directed to resort in case of need, is called a drawee in case of need and can accept without previous protest under section 116 of the Act

**34.** Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

(e) *Mungumul v ALVRT Firm*, 4 MLT 369, *In re New Fleming Spinning and Weaving Comp Ltd*, 3 Bom 439

(f) *Gray v Milner*, (1819) 8 Taunt 739

(g) *Polhill v Walter*, (1832) 3B and Ad 114; *Jackson v Hudson*, (1810) 2 Camp 447

(h) *Ibrahim Fazalbhoy v International Banking Corporation*, 1925 Bom 252, 27 Bom LR 283, 87 IC 485

(i) *Jogesh v Mahammad*, 57 Cal 695

(j) *Lindus v Bradwell*, (1848) 5 CB 583

(k) *Owen v Van Lister*, (1853) 10 CB 318

## NOTES

It has already been stated that when a bill is drawn against two or more persons as partners acceptance by one as such will bind the rest. This is under the rule of authority that one partner has to accept for another. Therefore, where the drawees are not partners acceptance can bind only the acceptor personally unless special authority is proved to accept the instrument for others.

**35.** In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given by, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand

## NOTES

This section deals with the liability of the person who indorses and delivers a negotiable instrument before maturity and, therefore, has no application to the indorser of a promissory note payable on demand because no question of 'before maturity' can arise in the case of such promotes (*l*). It does not govern the extent and nature of the liability of the indorser of a note payable on demand (*m*). The liability under this section arises out of the indorsement and not on the instrument itself (*n*), but indorsement alone is not sufficient, it must be followed by delivery to complete the contract (*o*). The right of suit by the indorsee depends on the indorsement which forms part of the cause of action and which, therefore, confers jurisdiction upon

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- (*l*) *Hemadri v Seshamma*, 1930 MWN 1232, 1931 Mad 113 130 IC 477, *Official Receiver Lahore v Amritsar N Bank*, 1945 Lah 825
- (*m*) *Jagannadha v Lakshmanma*, 47 MLJ 475; 1925 Mad 132, *Sivaram v Moideen*, 33 Mad 34
- (*n*) *Ibid*, *Moossem Kunhi v Kunhi Kattiyah*, 1940 Mad 85, *A. Nambiar v Pchattu*, 1939 Mad. 948, 188 IC 193
- (*o*) *Punjab National Bank v Balkishen*, 6 Lah LJ 230.

the court of the place where the indorsement is made to try the case not only against the indorser but also against the drawer (*p*) Therefore, a transferor of a negotiable instrument by mere delivery is not liable to a subsequent holder nor can he, in case of dishonour, make the prior parties liable (*q*).

**Conditions precedent to liability:**—Not only should the indorsement be followed by delivery before maturity of the instrument but there should be dishonour of the instrument by the drawee, acceptor or the maker and the notice of such dishonour to the indorser must be proved before the indorser is made liable for any loss or damage (*r*) These conditions precedent to the liability of the indorser must be fulfilled before any relief can be decreed against him Unreasonable delay in presenting the note for payment or in serving the notice after dishonour will discharge the indorser (*s*) The indorser, in case of dishonour, is bound to pay the amount due on the instrument with compensation for loss or damage to the holder What compensation will be payable will be determined under the provisions of section 117 of the Act

**Position of the endorser:**—The indorser by his indorsement undertakes the final responsibility of payment in case of dishonour by the acceptor or drawee after due presentation provided he has notice of dishonour (*s*<sup>1</sup>) His position is like that of a surety and he can be sued immediately by the holder in default of acceptance by the drawee or of payment by the drawer or acceptor (*t*) and neither the drawer nor the acceptor need be impleaded in the suit and the plaintiff has a right to sue the indorser alone (*u*) even when he is a guarantor (*u*<sup>1</sup>) at his option and the decree against the one is no bar to a suit against another (*v*) It has been held in a Calcutta case that a decree in which the liability of the indorser was made conditional upon failure to realise the amount from the drawer and the acceptor

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- (*p*) *Raghu v Govinda*, 22 Cal 451, *Subramonian v Maung Po Tha*, 11 IC 852; *Mangamma v Sathiraya*, 31 MLJ 816, *Nataindas v Chanda Ram*, (1928) Sind 86
- (*q*) *Valjee v Harsukdas*, 62 MLJ. 239
- (*r*) *Sanchulal v Onkarmal*, 18 ALJ 981, 59 IC 604; *Jagannadha v Lakshmanna*, 47 MLJ 475; 1925 Mad 132
- (*s*) *Ibid.*
- (*s*<sup>1</sup>) *Mahammad v Ranga Rao*, 24 Mad 654
- (*t*) *Jumnadas v Meher*, 1 Agra, 182
- (*u*) *Gopaldas v Sitaram*, 3 Agra 268, *Somasundaram v. Lakshman*, 17 IC 951
- (*u*<sup>1</sup>) *Punjab Co Bank v Yusuff*, 1939 Lah 225; 187 IC 650
- (*v*) *Pogose v Bank of Bengal*, 3 Cal 174, *Basantaram v. Kolahal*, 1 All 392, *Appasami v Ramanathan*, 30 Mad 167.

is illegal (*w*) The indorser is bound by his indorsement notwithstanding any previous alteration of the instrument (*x*) Payment has, therefore, to be made according to the tenor of the instrument at the time of the indorsement The indorser is also not permitted to deny, in a suit by a subsequent holder, the signature, or the capacity to contract of any prior party to the instrument (*y*)

As the liability of the indorser arises out of the indorsement and not on the instrument, limitation against him, will, therefore, run from the time of the indorsement and will not be affected by any part payment by the maker to keep the instrument alive against him (*z*)

**Expressly excluding his liability:**—This ordinary rule of liability is, however, subject to any contract to the contrary that may be arrived at between the parties by which the indorser may expressly stipulate to exclude his own liability by adding “Sans Recourse” or make his liability a conditional one on the happening of a certain event (*a*) Even if it is not expressly stated such intention to exclude his personal liability may be inferred from the nature of the transaction, as when a note executed by a third party in favour of X was endorsed by the latter in favour of his son as part of his share in partition, the indorsement by the father created no liability of the father on default of payment by the maker (*b*) Oral evidence of an agreement limiting the liability of the indorser is admissible (*c*)

**Indorsement of non-negotiable instruments:**—While the indorsement of a negotiable note creates an obligation between the indorser and the immediate indorsee and all subsequent holders, the indorsement of a non-negotiable note by the payee creates an obligation between him and the person in whose favour the indorsement is originally made and not between him and any other subsequent holder The simple reason is that the note not being negotiable there can be no privity of contract except between the payee and this indorsee and, therefore, no consequential obligation and liability, as under this Act, between the indorser and the other subsequent holders can arise (*d*)

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(*w*) *Bank of Bengal v Kartic*, 16 Cal 804

(*x*) Section 88 *post*.

(*y*) Section 122 *post*

(*z*) *Jagannandha v Lakshmanma*, 47 M L J 475; 1925 Mad 132, *Moossam Kunhi v Kunhi Kattyah*, 1940 Mad 85

(*a*) *Wakefield v Alexander & Co* (1901) 17 T L R 217

(*b*) *Satyamurthi v Abdul Karim*, 63 M L J 880, 1932 M W N 1149, 36 L W 777

(*c*) *Ayyathorai v Sivarama*, 32 I C 233, *Sundara v Abigall*, 1928 Sind 50

(*d*) Story on Pro notes, Section 128.

**36.** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied

Liability of prior parties to holder in due course

### NOTES

The expression, 'Prior party', means the maker, the drawer, the acceptor and other intervening parties upto the last holder. This section makes every party to a note liable to all subsequent holders in due course so long as the note remains unsatisfied or undischarged i.e. until the liabilities of all parties are extinguished by payment or satisfaction by the maker at or after maturity. The indorsee can make all persons whose names appear on the note on the date of the indorsement in his favour liable to him until the note is paid off. The holder can claim the amount from and sue all or some of the parties at his option (e)

Payments, satisfying the bill or note, must be endorsed on the same. When there is no indorsement of payment on the note or the bill, the indorsee is entitled to recover the full amount. When the maker of the note makes full payment but fails to take back the note and the note is passed off to a subsequent holder in due course the liability under the note is not extinguished and all prior parties will be liable to the last holder (f). If a note is paid by the maker before maturity and is revived by him, after taking return of it, before maturity, the liability of the intervening parties will stand extinguished (g).

If an indorser pays a note at or after maturity and again becomes a holder he reverts to his former position as against the prior parties though there is no reindorsement in his favour (h). He may, without cancelling the indorsements subsequent to that which made him the holder, negotiate the instrument and sue upon it (i).

When a holder strikes off the name of a prior party the liability of the person whose name is thus struck off as also the liability of parties subsequent to him stand extinguished

(e) *Basanta v Kolahal*, 1 All 392

(f) *Muthu v Velu*, 2 MWN 107, 35 IC 591

(g) Bill of Ex Act Section 37

(h) *Jameson & Co. v Scott*, 36 Cal 291, *Ponnayya v Palamappa*, 5 IC 435

(i) *Ibid*, *Bynath v Ramcharan*, 5 WR 86, *Motilal v Motilal*, 6 All 78, *Muthar v Kader*, 28 Mad 544, *Mowri v National Bank*, 25 Bom 499, *Marimuthu v Krishnasami*, 17 Mad 197, *Subramanian v Alagappa*, 30 Mad 441

Indorsement for collection may be struck out by the owner of the bill (j)

**37.** The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be

**38.** As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party

#### Illustration

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

#### NOTES

**Principal and surety:**—Sections 37 and 38 should be read together to determine the relationship of all the parties to a negotiable instrument whether a promissory note or a cheque or a bill of exchange. A party to a negotiable instrument is liable to the holder either as a principal debtor or as a surety. In the case of a promote or a cheque the original maker of the instruments, and, in the case of a bill of exchange, the drawer and after acceptance, the acceptor, ordinarily occupy the positions of the principal debtors unless there is a contract to the contrary and other parties to the instruments are liable as their sureties (k). The relationship *inter se* between such sureties is that every prior party is a principal debtor to every succeeding party. The executant of a promote should be regarded as the principal debtor and not as surety (l). But when there are two executants of a note and one executant

(j) *Pasupati v Raman*, (1915) MWN 227

(k) *Fentum v. Pocook*, (1813) 5 Taunt 192

(l) *Behari v Allahabad Bank*, 27 ALJ 1137, 1929 All 664, *Vyrtavan v Official Assignee*, 1932 MWN. 969, *Vellian v Umday*, 29 IC. 760

signed it as a surety for the other to the knowledge of the promisee evidence is admissible to prove that fact (*m*) But a different view has been held by the other High Courts (*n*) The latter view, it is submitted, seems to be the better one as it is consistent with the illustration in section 132 of the Indian Contract Act and Sec 92 of the Indian Evidence Act When, however, money is realised from one of the executants, in a suit for contribution by him against the other, the latter is competent to resist the claim on the ground that he was a surety (*o*) The maker of a promissory note cannot escape from his liability under this section on the plea that the note was attested by witnesses and the purchaser of the note being a holder thereof can recover the amount although initially the note was without consideration (*o*<sup>1</sup>)

As stated before, the drawer of a Bill of Exchange is the principal debtor so long as the bill is not accepted The drawer of a hundi made payable after a specified period after date, who is also the drawee, is liable thereupon as a principal debtor and presentment for acceptance or for payment is unnecessary (*p*) But the moment the bill is accepted the acceptor becomes the principal debtor and the drawer becomes only a surety The position of the sureties *inter se* is not that of co-sureties but that of a principal debtor and surety, every prior party being the principal debtor of every subsequent party although all are sureties in respect of the acceptor (*q*) The drawer or indorser stands in a position sufficiently analogous to that of a surety to entitle him to all the equities of the surety after dishonour and not before (*r*) and is entitled to the benefit of the set off in favour of the principal debtor (*s*) The relationship of principal and surety arises not because of any contract but because of the provisions of these two sections

**Successive endorsers:**—Where several persons successively endorse a negotiable instrument each prior party is individually liable to the succeeding party in the order of their

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- (*m*) *Maung Sein v Ma Saw*, 1924 Rang 360, *Tharumal v Krishnadas*, 1940 Sind 146 191 IC 58
- (*n*) *Behari v Allahabad Bank*, 27 ALJ 1137, 1929 All 664, *Harekchand v Bishen*, 8 CWN 101; *Panchanan v Doley*, 15 BLR 331, *Sarnalingam v Pachar*, 38 Mad 680, *Narsinhmurti v Ramasami*, 24 MLJ 91, *Vellian v Umidy*, 29 IC 760
- (*o*) See 132 Indian Contract Act, *Vellian v Umidy*, 29 IC 760, *Beharilal v Allahabad Bank Ltd*, 1929 All 664, 27 ALJ 1137.
- (*o*<sup>1</sup>) *Pudar v Bilasi*, 1939 Oudh 107, 179 IC 942
- (*p*) *Panchanan v Doley*, 15 BLR 331, 51 IC 859
- (*q*) Byles (19th Ed.) 275
- (*r*) *Aga Mahammad v Judith Emma*, 19 Cal 242 (P.C.)
- (*s*) *Chetandas v Ralli Bros*, 83 IC 135, *Indian Specie Bank v Nogindas*, 18 Bom LR 689, 35 IC 628

indorsement and the liability of these indorsers is not joint but several. Where after one full indorsement there were two blank indorsements the presumption is capable of being rebutted by evidence of any special agreement, as where the directors of a company agreeing with each other to become sureties to the bank for the same debt of the company made three promissory notes by the company and successively endorsed them, it was held that the directors were co-sureties and not sureties in succession (*t*). In the case of co-sureties there can be contribution between themselves in spite of their respective relationship with reference to the holder (*u*). The contract of the drawer, acceptor or the intervening endorser of a bill is distinct from each other and the liability of each to pay the same sum of money arises wholly out of his contract made severally subject to different conditions (*v*). Therefore, if a decree is obtained against any of the parties and the amount cannot be realised from him the plaintiff may proceed to institute a fresh suit against any other, and his election to proceed against one party is no bar to his proceeding against others, if need be (*w*). A bill may be time-barred against an acceptor but this may not discharge the liability of the drawer if the suit against him is in time (*x*). A creditor is not bound to exhaust his remedies against the principal debtor before proceeding against surety. He may sue either or both in one action (*y*). He may execute the decree against one or both but under exceptional circumstances court may direct the creditor to proceed against the principal debtor first (*z*).

**Agreement to the contrary:**—The ordinary rule of law laid down in these two sections regulating the relationship of the parties to the instrument is liable to variation by any special contract to the contrary between the parties. Thus, in the case of two joint makers of a note the presumption is that each took a moiety of the amount and so are jointly liable (*a*) and not as surety unless there is a special contract to the effect (*b*). In the case of accommodation bills or notes

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- (*t*) *Macdonald v Whitefield*, (1883) 8 AC 733  
 (*u*) *Reynolds v Wheeler*, (1861) 10 CB (NS) 561  
 (*v*) *Pogose v Bank of Bengal*, 3 Cal 174  
 (*w*) *Pegon v Ramjunt*, 1 WR 95, *Abdur Rahaman v Babu Ganesh*, 23 WR 444  
 (*x*) *Jambu v Sundararaja*, 26 Mad 239  
 (*y*) *Sankara v Virupakshapa*, 7 Bom 146  
 (*z*) *Panoty v Dwarka*, 4 CLR 145  
 (*a*) *Narayanamurthi v Marimuthu*, 26 Mad 322  
 (*b*) *Behari v Allahabad Bank*, 27 ALJ 1137, 1929 All 664, *Maung Sem v Ma Saw*, 1924 Rang 360, *Vyavan v Official Assignee*, 1932 MWN 969



the contrary contract is implied as between the party accommodating and the party accommodated (*c*) but no such special contract to alter the liability will be implied or presumed as between those parties and subsequent parties. Where a note is executed by the maker to accommodate the payee and the note is endorsed, the maker is liable to the indorsee as the principal debtor and the payee as his surety in the absence of a special agreement to the contrary (*d*). But where a person is induced to execute a promote in favour of a bank by its director to conceal an unauthorised loan to him on the express condition that the maker will not be liable on the note, the maker cannot escape liability to the bank as the director cannot represent the bank to enter into the special agreement (*e*).

**Position of surety:**—When the principal debtor defaults and the amount is realised by the holder from the surety the latter acquires all the rights and equities of the creditor against the principal debtor (*f*) and becomes entitled to the benefit of the securities furnished by the maker although he may not be aware of the existence of such security (*g*). If the holder parts with such security without his consent the surety is proportionately discharged (*h*). The surety may be discharged by a contract or by any act or omission of the creditor (*i*). Where an indorsee of an accommodation note takes mortgage from the payee for the amount and grants him time to make the payment the maker is discharged from the liability (*j*). Mere knowledge that the maker is an accommodation party does not deprive the creditor of his right to treat him as a principal debtor (*j*<sup>1</sup>). For discharge of surety, see Indian Contract Act sections 134-141.

**39.** When the holder of an accepted bill of exchange enters into any contract with the acceptor which,  
Suretyship

(*c*) *Nanda v Sital*, 5 All 484, *Pamoty v Dwaraka*, 4 CLR 145

(*d*) *Bank of Hindusthan v Govindarajulu*, 38 LW 961 1934 Mad 75 147 IC 146

(*e*) *National Bank v Bansidhar*, 92 IC 194; 57 IA 1; 5 Luck 1

(*f*) Indian Contract Act, Section 40

(*g*) *Aga Ahamed v Judith Emma*, 19 Cal 242 (PC)

(*h*) I Contract Act, Section 141.

(*i*) *Ibid*, Section 134

(*j*) *Ram Krishnayya v Kassim*, 13 Mad 172

(*j*<sup>1</sup>) *Bellen v Bank of Upper India*, 13 OC 206

under section 134 or 135 of Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged

### NOTES

This section is an exception to the general law that if the principal debtor is discharged by the creditor the surety is also discharged along with him, under the provisions of sections 134 and 135 of the Indian Contract Act. It is not permissible under that Act to keep the liability of the surety intact after the discharge of the principal debtor or after any sort of composition with him (*k*). But a different view has been expressed in other cases (*l*).

**Granting time:**—The drawer and the indorser of the bill are discharged if the holder agrees to give time for payment to the acceptor (*m*). But they won't be discharged if the holder enters into a contract with a third person to give time to the principal debtor (*n*). A mere promise to grant time without any consideration does not discharge the sureties (*o*). A surety is not discharged if the holder waits till the expiry of the period of limitation to proceed against the principal debtor (*p*). But according to the Allahabad High Court by such forbearance he is discharged (*q*). The section being an exception to the general rule of discharge of sureties should be confined to contracts only with the acceptor.

A surety cannot get his discharge by giving a notice to the creditor that the principal debtor is selling away his

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- (*k*) *Mathewson v Ramkanai*, 16 IC 317, *Williams v King*, 20 IC 189, *Maung Po v Moung Kaw*, 44 IC 693, *Lakshmi v Venkata*, 15 LW 143
  - (*l*) *Bharumal v Mazar*, 52 IC 870, *Sankara v Verupakshapa*, 7 Bom 146, *Murugappa v Munusami*, 38 MLJ 131
  - (*m*) *Askadan v Pir Bux*, 8 CLJ 163, *Mohendra v Jadab*, 14 WR 5, 7, *Hari v Krishna*, 17 WR 442
  - (*n*) I Contract Act, Sec 136
  - (*o*) *Damodar v Mahammad*, 22 All 351, *Clerk v Burley*, (1889) 41 Ch D 422
  - (*p*) *Kisto v Radha*, 12 Cal 330, *Brojendra v Hindusthan Co-operative Ins Society*, 44 Cal 978, *Hajarmal v Krishna*, 5 Bom 647, *Sankara v Virupaksappa*, 7 Bom 146, *Raghavendra v Mahepat*, 49 Bom 202, *Subramania v Gopala*, 33 Mad 308, *Dil Mahammad v Sandas*, 1927 Lah 396, *Nurudin v Alladitta*, 1932 Lah 419, *Narandas v Nenu*, 1929 Nag 145
  - (*q*) *Ranjit v Nanbat*, 24 All 504, *Saligram v Lachman*, 50 All 211; *Jagmohun v Gatala*, 130 IC 298

properties and the creditor should take steps to realise the money (r) But if the creditor assents to a transfer of the property by the principal debtor or does any act by which the remedy of the surety against the principal debtor is impaired the surety is discharged (s) So also where a creditor accepts interest in advance from the principal debtor on condition that he will not sue the debtor during the time for which the interest is paid the surety will be discharged (t), but where the interest is accepted without any such condition the surety will not be discharged (u) An act which may extend the time and privileges to the creditor but confers no benefit to the debtor nor affects the surety will not discharge the latter (v)

**Reservation of right:**—The reservation of right by the holder against the parties mentioned in the section must be express and clear In a suit instituted by the creditor on a promissory note against the maker and the two sureties, when the plaintiff withdrew the claim against the maker, it was held that he could proceed only against the sureties as there was express reservation of his right against the sureties (w) A surety was not held to be discharged if in a similar case the suit was dismissed against the maker for non-service of summons (x) But where a creditor allowed the case to abate against the principal debtor by omission to substitute his legal representatives in time (y), or where in appeal the creditor appellant failed to add the principal debtor as a respondent (z) the surety was held to be discharged

An accommodation acceptor is to prove that he is not, as appears on the face of it, the principal debtor but is only a surety and on such proof he will be entitled to the rights of a surety (a) A person who was originally a principal debtor but by a subsequent arrangement converted himself to a surety as where a retiring partner by a deed covenanted that the continuing partners should pay the debts and indemnify him and become a surety for the debts of such creditors as had notice was allowed to prove that he was a surety and had the

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- (r) *Dryahu v Nandu*, 1931 Lah 691  
 (s) *Pogose v Bank of Bengal*, 3 Cal 174  
 (t) *Kali Prasanna v Ambika*, 9 B L R 261; *Protap v Gour*, 4 Cal 132; 6 Cal 241 (P C)  
 (u) *Panchanan v Daly*, 15 B L R 331  
 (v) *Debidas v Santasingh*, (1931) Lah. 627  
 (w) *Jawala v Raj Kaur*, 1930 Lah 812, *Murugappa v Munusami*, 38 38 M L J 131  
 (x) *Ali v Mahammad*, 14 Bom 257, *Nathabai v Rochodlal*, 39 Bom 52.  
 (y) *Nurudin v Alladitta*, 106 IC 481  
 (z) *Mathewson v Ramkanai*, 16 IC 387  
 (a) *Ram Krishnappa v Kassim*, 13 Mad. 172

rights and privileges of the surety and neither section 132 of the Contract Act nor section 92 of Indian Evidence Act was held to be any bar to such proof (b)

**40.** When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity

#### *Illustrations*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank —

First indorsement, "B"

Second indorsement, "Peter Williams"

Third indorsement, "Wright & Co"

Fourth indorsement, "John Rozario"

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co A is not entitled to recover anything from John Rozario

#### NOTES

This section deals with the discharge of an indorser by the act of a holder of the instrument. The liability of the indorser of an instrument to the holder is the liability of a surety—the indorser being a surety of all prior parties. Therefore, when on account of the default of payment of the principal debtor, the indorser pays the amount covered by the instrument to the holder, he becomes automatically entitled to recover the amount from all prior parties to the instrument. It, therefore, follows that if the holder does anything calculated to impair or destroy such remedy of the indorser against the prior parties, without his consent, the indorser's liability will stand discharged and the holder will not be competent to realise anything from him. As will be seen from the illustration to the section all subsequent indorsers will be discharged from their liability if the holder strikes out the name of any prior indorser as it will impair the remedy of the subsequent indorser against the prior ones. "The contracts of several indorsers are like so

(b) *Pogose v Bank of Bengal*, 3 Cal 174, *Krishnoyya v Kassim*, 13 Mad 172, *Hariban v Bhagavan*, 7 B L R 535, *Mulchand v Madhoram*, 10 All 421

many links of a pendant chain, if the holder dissolves the first, every link falls with it. If he dissolves an intermediate link, all after it are likewise dissolved. But the last link supports nothing and its dissolution injures no one" (c)

Besides the striking out of the names of the parties there is another kind of act of the holder which may impair the indorser's remedy against the prior parties and may, therefore, lead to his discharge. That is, when the holder destroys or impairs the securities to which the indorser becomes entitled after payment. The same rule is applicable to the indorser of a promote that applies to the indorser of a bill of exchange, that if he pays the holder of it, he is entitled to the benefit of the securities, given by the maker in the one case, the acceptor in the other, which the holder has in his hands at the time of the payment and upon which he has no claim except for the note or the bill (d). And when the holder impairs or destroys such securities without his consent the indorser is discharged from liability (d<sup>1</sup>).

**41.** An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

## NOTES

The reason of the rule enunciated in the section is plain in that no person should be allowed to take advantage of his own fraud and shirk liability. When a person at the time of acceptance of an instrument knew or had reason to believe that the indorsement thereon was a forgery and with full knowledge of this fact became a party to the instrument he must be made liable for it and cannot be allowed to deny his liability on the ground of forgery. But for his knowledge of forgery at the time of his acceptance, he will not ordinarily be precluded by his acceptance from pleading that the indorsement is a forgery (e). An acceptor who has admitted the authenticity of the indorsement as true cannot afterwards refuse to

(c) Daniel on Neg Instruments, Sec 1307

(d) *Aga Ahmed v Crispe*, 19 Cal 242

(d<sup>1</sup>) *Punjab C Bank v Yussuff*, 1939 Lah 225 187 I C 650

(e) *Robinson v Yarrow*, (1817) 7 Taunt 455

honour it on the ground that it is forged (f) The acceptor cannot be allowed to prove against a bona fide holder for value that either the drawing or the indorsement is a forgery The name may be that of a real or a fictitious person (g)

**42.** An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer

## NOTES

Under this section the acceptor is liable only to a holder in due course That is to say, only the holder in due course can recover on instruments in which the drawer or payee is fictitious because law abhors fraud and discountenances any instrument whereby fraud can be committed (h) Whenever the name of a person is put in an instrument as payee, by way of pretence without any intention of any payment being made to him, the payee is a fictitious person although as a matter of fact such a person exists (i) The acceptor, for obvious reasons, cannot escape liability by proving that the drawer is a fictitious person for by accepting the bill he admits that he has funds of the drawer at his hands from where to make the payment The only condition that attaches to the enforcement of this liability by the holder in due course is that such holder must claim under an indorsement by the same hand as the drawer's signature in the instrument

**43.** A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the

(f) (1802) 4 Esp 226

(g) *London and South Western Bank v Wentworth*, (1880) 5 Ex D 96

(h) *Daniel on Neg Instrument*, Sec 136

(i) *Bank of England v Vaghano*, (1891) AC 107, (1891) 7 TLR 656, *Harindra v Haridas*, 41 Col 972, *Biswanath v Chandra*, 48 Cal. 509

transaction But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto

*Exception I*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation

*Exception II*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed

## NOTES

This section and the next two following sections deal with the want or failure of consideration and the question of liability of the parties thereunder Want or failure of consideration of an instrument may be either complete or partial The present section deals with total want or failure of consideration and its effects and the next two sections deal with partial want or failure of consideration This section must be read subject to section 59 of the Act in all cases to which the latter applies Thus, where the instrument is acquired by the holder after maturity section 59 applies and the holder after maturity has as against other parties only the rights thereon of his transferor (<sup>1</sup>)

**Onus of proving consideration:**—Under section 118 post every negotiable instrument shall be presumed to be for valuable consideration until the want or failure of consideration is proved by the person alleging it That is to say, in an action on a negotiable instrument, the defendant, unlike other

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(<sup>1</sup>) *Ram Narain v Ram Jewan*, I.L.R. 1937 Nag 159, 165 IC 926, 1937 Nag 267

contracts where the plaintiff must prove consideration, must prove want or failure of consideration

**Who can plead want or failure of consideration:—**But this want or failure of consideration can be pleaded only between the two parties to the instrument who stand in immediate relationship to each other *eg* the drawer and the acceptor, the payee and the drawer of a cheque or the maker of a promote, an indorser and his indorsee (*j*). In an action between parties who do not stand in such immediate relationship the defendant cannot take the plea that he drew, accepted or indorsed it for no consideration (*k*). Thus, if a bill of exchange or a note be delivered by the drawer or maker to the payee as a gift, it cannot be enforced against him or his representatives. No liability arises between the donor and the donee and the latter cannot enforce it against the former (*l*) but as between the donee and the other parties to the bill, they are liable to the donee (*m*). A promote executed for services which are not afterwards rendered is not enforceable against the maker as there is failure of consideration (*n*), or where it is executed for a balance not really due it is unenforceable against the maker as there is a total want of consideration (*o*). Failure of consideration has the same effect as want of consideration (*p*). The defence of failure or want of consideration cannot be pleaded between parties who do not stand in immediate relationship as enumerated above (*q*). Where there is good consideration from the drawer to the payee no further consideration need be proved to pass from the payee to the acceptor to make the latter liable (*r*). But where no consideration passes between the two original parties to an instrument but it is subsequently transferred or endorsed for consideration, the holder for value can make all the prior parties liable and the acceptor will not be heard to say that he has accepted it without consideration and, therefore, not liable on such acceptance. If at any intermediate

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- (*j*) Explanation to Sec 44 (post)
  - (*k*) *Robinson v Reynolds*, (1841) 2 QB 196, (1918) 1 KB 43 (1918) 2 KB 623
  - (*l*) *In re Whittaker*, (1889) 42 Ch D 119, *Sutton v Featherley*, (1926) 1 Ch 38
  - (*m*) *Eastern v Protchatt*, (1835) 1 C.M. and R. 798
  - (*n*) *Abbot v Hendricks*, (1840) 1 Man and Gr 791
  - (*o*) *Kearns v Durrell*, (1848) 6 C.M. 596
  - (*p*) *Motishaw & Co v Mercantile Bank of India*, 41 Bom 566, *Suppan v Sadaya*, 99 IC 753
  - (*q*) *Robinson v Reynolds* (1841) 2 QB 196, (1918) 1 KB 43, (1918) 2 KB 623
  - (*r*) *Jogesh v Mahammad*, 57 Cal 695



stage consideration passes, it is sufficient to make the bill enforceable by the holder against all prior parties. A draws a bill which is accepted by B without consideration. A transfers it to C for consideration. Although B is not liable to A for accepting it without consideration and such defence is allowable between the two immediate parties (A and B) he is certainly liable to the holder C as his plea of want of consideration will not be entertained as B and C are not immediate but remote parties (s) and between such parties it is not necessary to prove the passing of consideration.

**Failure of consideration:**—As has been stated before failure of consideration has the same effect as total absence of consideration (t). Thus, in consideration of acting as the executor under his will A executes a note in favour of B for a certain amount. A survives B who, therefore, cannot act as his executor. The consideration, therefore, fails and the note becomes unenforceable (u). There are no obligations between the two parties to a contract which is based on a future event and when that event becomes impossible for no fault of either party (v). Upon the failure of consideration for a note, obligation to pay under it is discharged (w). But the liability to pay is not discharged if the consideration does not fail, as where a bill was accepted against shipping documents for goods which could not be delivered on account of war but was allowed to be taken delivery of by a proclamation which saved the consideration (x). But there would be failure of consideration if acceptance of the bill was obtained after outbreak of the war against bills which had become void by the state of war (y). Defence of failure of consideration is open only between immediate parties but once the instrument is transferred for consideration the holder and every other party subsequent to him can enforce it against all prior parties (z). But where, with the full knowledge of the indorsee about failure of consideration, a note is indorsed in his favour he cannot recover the amount as

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(s) 16 Bom LR 343; *Jethmal v Haridas*, 1949 Assam 6

(t) *Motishaw & Co v Mercantile Bank of India*, 41 Bom. 566; *Suppan v Sadaya*, 99 IC 753

(u) *Solly v Hinde*, (1834) 2 Cr and M 516

(v) *Macleod v Ivan Jones*, (1926) Cal 189, *Elliot v Crutchley*, (1906) AC 7. Set also 2 Lah 385; 1938 All 74

(w) *Mc Ayool v Sowdager*, 1923 Rang 127; 82 IC 689, 1 Bur LJ 261

(x) *Motishaw & Co v Mercantile Bank of India*, 41 Bom. 566, *Suppan v Sadaya*, 99 IC 753

(y) *Marshall v Noginchand*, 42 Bom. 473

(z) *Subrao v Sitoram*, 2 Bom LR 473, *Santhana v Sundaraswami*, 1 MLT 393

it will open wide the door for fraud (a) In a suit on a promissory note given as a security against overdrafts from a bank it is open to the defendant to plead absence of consideration and to ask for an account of the money due (b), or that no money was taken at all (c) Where on presentation of a bill by a bank it was accepted by a firm with reference to a bill of lading for a specified quantity of goods and the bill of lading subsequently turned out to be a forged one it was held that the bank was entitled to recover the amount due under the acceptance which was unconditional and not dependent upon the nature of the bill of lading about the genuineness of which there was no warranty by the bank (d)

**Prior party:**—"Prior party threat" means any party to the bill at the time of the transfer (e)

**Exception I**—This clause refers to accommodation instrument Accommodation bill or note is an instrument to which a party, in order to accommodate another, lends his name without consideration for the use of the latter who is to pay it when due (f), and in case the accommodating party has to pay the amount, the party accommodated undertakes to indemnify him for his loss (g) The accommodated party cannot recover anything from the party accommodating as there is no consideration between the two But once there is a transfer for consideration to a third party the transferee will be entitled to recover the amount from any one whose name appears on the bill and the absence of consideration between the two prior parties will not affect him (h) In a suit on a promissory note it is open under this section for the defendant to plead want of consideration and that he signed the note as a mere name lender so long as the rights of bona fide transferee are not involved (i) Cross acceptances made for mutual accommodation are not really accommodation bills but are bills for valuable consideration the acceptance of one being considered the consideration of the other and *vice-versa* Therefore, if either of such party becomes an insolvent the bill accepted by him will be provable against his estate (j)

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- (a) *Mutha v Kasvasi*, 10 MLT 69
  - (b) *Sundaram v Damodaram*, 1924 MWN 529
  - (c) *Suppan v Sadaya*, 99 IC 653
  - (d) *Baxter v Chapmon*, (1873) 29 LT 642, *Guaranty Trust & Co v Hannay & Co*, (1918) 2 KB 623
  - (e) *Rohilkhand Bank v Row*, 7 All 490, 1885 AWN 101
  - (f) *Parr v Jewell*, (1855) 16 CB 684
  - (g) *Nanda v Sital*, 5 All 484
  - (h) *Rohilkhand Bank v Row*, 7 All 490, 1885 AWN 101 (FB)
  - (i) *Sesha v Mangal*, 20 MLJ 144, *Suppan v Sadaya*, 99 IC 753
  - (j) *Burdon v Benton*, (1847) 9 QB 843, *Kent v Lowen*, 1 Camp 177.

**Exception II:**—The operation of the clause is confined to the immediate parties only and the exception should be strictly applied. This exception can be applied only against the persons who offered the inducement (*k*). A executes or indorses a note to B for no consideration. B is induced by C to transfer it to him for a quarter the value. C can recover from A or B only the amount he has paid.

**44.** When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

*Explanation*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

#### *Illustrations*

A draws a bill on B for Rs 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs 400.

### NOTES

According to English Law a valuable consideration may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment or loss or responsibility given or suffered or undertaken by the other (*l*). According to Sec 2(d) of the Indian Contract Act consideration means an act, abstinence, or promise made by the promisee or any other person at the desire of the promisor. This definition is wider than that of English Law (*m*). Consideration may, therefore, consist of money as well as of something

(*k*) *National Bank of India v Bansidhar*, 57 IA. 1, 92 IC 94

(*l*) *Currie v Misa*, (1875) LR 10 Ex 164

(*m*) *Debnaram v Ramsadan*, 41 Cal 137, 17 CWN 1143, 20 IC 630

other than money but having a money value This section applies where the consideration consists of money only and there is partial want or failure of such consideration This section has no application where the consideration consists partly of money and partly of something other than money but having a money value as for instance cancellation of an old note ( $m^1$ ), or where a hand note reserving simple interest is renewed charging compound interest the consideration for renewal being forbearance to sue on the promisor's agreement to pay compound interest ( $m^2$ ) The next following section deals with partial want or failure of consideration other than money with reference to the immediate parties Who are regarded as immediate parties will be found in the explanation annexed to the section

**Total or partial want or failure:—**Where the consideration for which a party signed a bill or note consisted of a definite sum of money or of something the value of which was definitely ascertainable in money and it was either originally absent in part or has subsequently failed in part, the amount which a holder standing in immediate relation to such party is entitled to recover from him is protanto reduced ( $n$ ) Partial failure of consideration is a defence protanto against an immediate party when that part of consideration is an ascertained and liquidated amount and not otherwise ( $o$ ), that is, when collateral enquiry is not necessary for the purpose ( $p$ ) In cases of partial failure of consideration, it is only where that part is ascertainable in money without collateral enquiry that reduction can be made but if a collateral enquiry becomes necessary for ascertainment of the amount the holder can recover the whole amount on the instrument ( $q$ )

As already stated the operation of this section is confined to money consideration and to the immediate parties Thus where a promissory note is executed for money to be advanced and the payee advances a lesser amount subsequently than is mentioned in the note, the liability of the maker is proportionately reduced ( $r$ ) Where a pronote is executed for money due under a suit on an earlier note in which a payment of a certain amount was not credited on the understanding that accounts should be examined, a defence of partial failure

( $m^1$ ) *Abdul Aziz v Maung Pe Tint*, 1940 Rang 152, 189 IC 384

( $m^2$ ) *Ajodhya v Ram*, 1938 Pat 324, 174 IC 197

( $n$ ) *Day v Nix*, (1824) 9 Moore 159, *Sonthal v Regg*, (1815) 11 CB 481

( $o$ ) (1824) 9, Moore 159, *Chalmers* (10th Ed) 159

( $p$ ) *Arunachalam v Krishna*, 49 MLJ 530, 90 IC 481, 1925 Mad 1168

( $q$ ) *Sethna v Ladak*, 8 IC 924

( $r$ ) *Nasir Ali v Kher Chand*, 36 IC 996

of consideration can be taken in an action on the second note (s) When a cheque is given for a larger amount than is actually due, the payee can recover only what is due and no more (t) and evidence is allowable to shew that the drawer of the cheque was induced to sign it on the representation that the sum mentioned in the cheque was due (u) Similarly, when one person executed a note as part consideration for the price of a property in favour of another who had possession but no title, there was failure of consideration and consequently there was no liability to pay (v)

Such defence of absence or failure of consideration can be taken only against an immediate party No subsequent holder will be affected by partial absence or failure of consideration between the prior parties

#### 45. Where a part of the consideration for which

Partial failure of consideration not consisting of money a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

### NOTES

This section deals with partial failure of consideration other than money consideration between the immediate parties It is essential that such consideration should be ascertainable in money value without any collateral enquiry Partial failure of consideration is a defence pro tanto against an immediate party when the consideration that has failed is an ascertained and liquidated amount and not otherwise (w), that is, when collateral enquiry is not necessary for the purpose of ascertaining the money value of such consideration (x) The holder can, however, recover the full amount mentioned in the note if the partial want or failure of consideration is not ascertainable

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- (s) *Dhanakoti v Venkatarama*, 67 MLJ 650, 40 LW 706, 1934 MWN 1382  
 (t) *Kishen Bahadur v Sassaram Lime Ltd*, 1924 Pat LR 54, 80 IC 572  
 (u) *Sonthal v Rigg*, (1851) 11 CB 481  
 (v) *Ayub v Sondagar*, (1923) Rang 127  
 (w) 9 Moore 159  
 (x) *Aruna v Kaishra*, 49 MLJ 530, 1925 Mad 1168; 90 IC 481; *Abdul Aziz v Maung Pe Tint*, 1940 Rang 152 189 IC 384

in its money value without collateral enquiry. Thus, when in a note executed for a certain amount say Rs 500/- by A in favour of B for the price of goods to be supplied and B supplied the goods, A cannot allege partial failure of consideration on the ground that the goods supplied were of inferior quality—a defence requiring a collateral enquiry. A is, therefore, bound to pay the whole value of the note (y) though he may claim damages from the payee for the loss suffered by him. But when the note was executed for Rs 100/- for two bales of cotton of equal value of which only one was supplied, a defence of partial failure of consideration was tenable and the amount was protanto reduced (z) as the amount was ascertainable without any collateral enquiry. The gist of the whole thing is that the amount is to be ascertained from the instrument itself and must not be left to be determined by extraneous evidence.

#### 45A. Where a bill of exchange has been lost

Holder's right to duplicate of lost bill before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

### NOTES

This section deals with the position caused by the loss of a bill of exchange before it is overdue. In the original Act there was no provision for the loss of such instruments although in the corresponding English Law—Sec 69 of the Bills of Exchange Act, there was provision for the same. The section was accordingly inserted by section 3 of the amending Act 11 of 1885. Although the section only relates to the bill of exchange its application has been extended to other negotiable instruments as well (a). Prior to the passing of this Act the principles enunciated in this section were applied in the case of the loss of a cheque (b).

(y) *Sethna v Ladak*, 8 IC 924

(z) *Arunachalam v Krishna*, 49 MLJ 530, 90 IC 481, 1925 Mad 1168 (1866) LR 2 Ex 56

(a) *Udhoram v Hemraj*, 1924 Lah 198

(b) *Baldeo v Grish*, 2 All 754

**Position of the owner of a lost instrument:**—Under the ordinary law the owner of a lost article can recover it from the finder thereof or from any transferee for value from the finder. A finder of goods is a bailee for the real owner (c). The rule embodied in this section is an exception to this rule of the Indian Contract Act. In the case of a bill of exchange and, for the matter of that, as stated before, in the cases of other negotiable instruments, the owner of the lost instrument can recover it from the finder until it passes to a holder in due course (d). As these instruments are negotiable a finder may transfer it and any person who becomes a holder in due course acquires a good title to it and can enforce it against all prior parties. The bill cannot, therefore, be recovered from such holder. On the other hand the latter can proceed against the former. The owner will, however, be able to recover it from a transferee for value from the finder if such transferee takes the instrument with notice of such loss. As in such cases the transferee is without bona fides and is not, therefore, a holder in due course (e). When the instrument has passed from the finder to a bona fide transferee for value, that is to say, to a holder in due course before maturity the owner of the lost instrument can recover damages from the finder (f) but not from such holder.

**Notice:**—The essential condition under which a transferee for value before maturity from the finder of lost instrument can resist the claim of the true owner is that the transfer is a bona fide one. And there can be no bona fide transfer when a transferee takes the instrument, although for valuable consideration, with the knowledge that the instrument is a lost one. It is, therefore, necessary for the true owner, in order to safeguard his interest, to notify the loss of the instrument and that too before the instrument matures. Such notice should be given to all the parties liable on the instrument as well as to the public so that, on negotiation, none can become a holder in due course. The notice should reach the parties before maturity. The loss should be made well known to the parties.

**Owner's right:**—When an ordinary article is lost it is, if untraceable, lost for good. But the owner of a lost negotiable instrument does not absolutely lose all his rights even if it is untraceable. He still continues to be the owner and on maturity is entitled to demand payment and in case of dishonour should give notice of dishonour to prior parties, otherwise he will lose

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(c) Indian Contract Act, Sec 71

(d) *Lovell v Martin*, (1813) 4 Taunt 799

(e) *Ibid*

(f) (1834) 2 Cr and M 579

his remedy against the drawer and the indorser (g) The owner has also a right to take from the drawer or maker, before it is overdue, a duplicate copy of the instrument on furnishing an indemnity bond against the possible claim of a holder in due course in future, for otherwise, if the instrument is subsequently found with a holder in due course, the drawer or the maker will be liable to such holder and thus may have to make double payment To guard against such a contingency an indemnity from the owner is necessary In such an event the owner will have to compensate the drawer or the maker (h)

If the original has been duly paid, the duplicate need not be paid and a custom to the contrary cannot be given effect to (i) When the owner is willing to furnish the proper security an action will lie against the drawer for his refusal to grant the owner a duplicate (j)

It is only the holder of the bill, who, in his own name, is entitled to the possession of the instrument, that has a right to ask for a duplicate and none else (k)

**Before over due.**—The right conferred by this section upon an owner can be exercised only when the instrument is lost before maturity If it is lost after it is over due, the owner has no right to ask for, nor is the drawer bound to give a duplicate under this section The right to obtain a duplicate in case of loss is, however, a part of the mercantile laws of countries and duplicate may be demanded on equitable principles whether the bill is lost before or after maturity (l) Where no duplicate of a hundi is supplied no presentment as against the drawee is necessary under section 76 (a) *post* (m)

**Destroyed Bills.**—In case of lost bills there is a chance of its recovery and, therefore, an indemnity clause has been provided for In case of destroyed instruments no indemnity is necessary and the plaintiff can recover without indemnity (n).

Duplicate of a lost hundi is known as Peth

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(g) *Thackray v Blackett*, (1812) 3 Camp 164

(h) *Indur Chandra v Lachmi*, 15 WR 501

(i) *Ibid*

(j) *Gillet v Bank of England*, 6, TLR 9

(k) *Kamini v Radha*, 18 WR 58

(l) *Udhoram v Hemraj*, 1924 Lah 198, 72 IC 777

(m) *Ibid*

(n) *Falconbridge on Banking*, 799



## CHAPTER IV

### OF NEGOTIATION

**46.** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof

### NOTES

**Delivery essential:**—Negotiable instruments are contracts which cannot be operative only when they are written and signed (o) Delivery of the instruments after they are signed is essentially necessary to complete the contract, that is, in order to make the property in the instrument pass, it is not sufficient to sign or endorse it, it must also be delivered to the payee or indorsee (p) Suppose, the maker of a promote writes out and signs the instrument but does not make it over to the person in whose favour it is executed, the instrument cannot be

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(o) *Thorappa v Umedmalji*, 87 IC 266, 1924 Bom. 205, 25 Bom.L.R. 604

(p) *Ibid*; *Bhoga Ram v Kishorilal*, 1928 All 289

enforced (*q*) Until and unless it has been delivered the instrument is inchoate, incomplete (*r*) and revocable (*s*) There can be no cause of action on a negotiable instrument before delivery (*t*) as property does not pass before delivery is fully completed (*u*) Thus, when half of a note is sent with promise to send the other half afterwards property in the note remains with the sender until the other half is sent (*v*) An instrument delivered to one's own agent for delivery to the payee can be revoked before it actually reaches the payee (*w*) The property in a currency note passes by mere delivery (*x*) But what is delivery? Delivery means transfer of possession actual, or constructive, from one person to another (*y*) Section 33 of the Sale of Goods Act (*z*) defines delivery as the voluntary transfer of possession from one person to another and, therefore, the parties concerned should agree to the transaction with full knowledge of it, that is to say, the assent of the parties to the transaction is essential In other words, the intention of passing the property to the person to whom it is delivered is necessary (*a*) It follows, therefore, that when a document is obtained by fraud or force (*b*), or given to a servant for collection of the amount (*c*) there is no delivery and the property in the instrument does not pass Delivery ordinarily implies acceptance by the endorsee, but if the endorsee sends back the instrument the endorsement is declined and not accepted and the contract is incomplete

**Delivery of pronote and bill.**—In the case of a pronote the execution of which is the act of the maker, delivery to the payee (*d*) or to the beneficiary under the note (*d*<sup>1</sup>) completes the contract, although delivery is not required in the case of acceptance of a bill of exchange which is written on the drawee's paper (*e*) But this distinction has been wiped out by the

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- (*q*) *Bromage v Lloyd*, (1847) 1 Exch 32, *Gough v Findon*, (1851) 7 Exch 48  
 (*r*) Section 21 (1) Bills of Ex Act  
 (*s*) Section 85, *Ibid*  
 (*t*) *Bhowanjy v Devj*, 19 Bom 635, 79 IC 461  
 (*u*) *Thorappa v Umedmalji*, 1924 Bom 205, 25 Bom L R 604, 87 IC 226  
 (*v*) *Koti Venkataramial v Official Assignee of Madras*, 33 Mad 1936  
 (*w*) (1836) 1 M & W 365  
 (*x*) *Srinivasa v Narasim*, 50 Mad 916, 1927 Mad 797 104 IC 719, 53 MLJ 309  
 (*y*) Halsbury, Vol 11 p 463  
 (*z*) Act III of 1930  
 (*a*) *Punjab National Bank v Balkrishen*, 79 IC 461; 6 Lah LJ 230  
 (*b*) 57 MLT 33  
 (*c*) *Sathamuthu v Abdul Karim*, 1932 MWN 1149  
 (*d*) *Winter v Round*, 1 MHCR 202  
 (*d*<sup>1</sup>) *Sunnachami v Ramaswami*, 1939 Mad 858 188 IC 48  
 (*e*) *Ibid*

present section which requires delivery in the case of both to complete the contract. It is submitted, however, that this section and section 7 (*ante*) are difficult to reconcile. According to the present section delivery is a condition precedent to the completion of the contract in case of acceptance of a bill of exchange but under section 7 acceptance may be completed either by delivery or by notice given by the acceptor of his signing as an acceptor (*f*) which act amounts in law to constructive delivery (*g*). But constructive delivery being also a form of delivery, the latter decision, it would seem, makes the clause beginning with "or notice" in section 7 altogether superfluous.

**Delivery actual or constructive:**—The English Bill of Exchange Act, section 2 defines delivery as a transfer of possession, actual or constructive, from one person to another. Delivery is actual when the instrument is handed over by one person to another or to his agent (*h*). In actual delivery, parting of actual physical possession is indispensable which is not necessary in constructive delivery. Thus, when the maker of a note or the drawer of a bill, after signature, keeps the note or the bill, as agent of the payee or the drawee, and does not actually hand over the instrument to one or the other, the contract is complete by constructive delivery (*i*). In constructive delivery actual physical transfer of the document is not required, it will, in the eye of law, be deemed to have been delivered if there is express and unequivocal intention to hold the instrument on behalf of the payee or the transferee.

Apart from the provisions of this Act there is another way of transferring the right and title in these instruments, that is, under the ordinary law of transfer of chattels. Though there were no endorsement and delivery as contemplated under the Negotiable Instrument Act, there was a valid transfer of a G. P. note by a registered deed of gift and the transferee was entitled to it and to the property referred to in it. Delivery of the property is not necessary where the gift is by a registered document (*j*). The transferee under the general law would, of course, be not in the privileged position of a holder in due course (*k*) as under this Act.

(*f*) *Paragdas v Doulatram*, 11 Bom 257

(*g*) *Thorappa v Umedmalji*, 1924 Bom 205; 25 Bom L R 604, 87 IC 226

(*h*) Sec 47, Illustration (a) *post*

(*i*) *Ibid*, Illustration (b)

(*j*) *Benode v Asutosh*, 16 CWN 666, 14 IC 720, *Muthur v Kadur*, 28 Mad 524, *Kottueth v Udaya*, 1912 MWN 524

(*k*) *Benode v Asutosh*, 16 CWN 666, 14 IC 720

**Delivery by whom?**—To make it effective, delivery must be made by the maker, drawer, acceptor or the indorser or by an agent on his behalf. The legal representative of a deceased endorser is not his agent and delivery of a note, endorsed but not delivered by the deceased, cannot be made by his legal representatives without fresh endorsements (*l*). Delivery by an agent, without authority, if ratified subsequently even after suit, is effectual (*m*). It need not be simultaneous with the endorsement since the contract can be revoked before delivery (*n*).

Evidence may be adduced to prove against an immediate party or a remote party who is not a holder in due course that the instrument was delivered neither by the maker or the indorser nor under his authority (*o*).

**Conditional delivery:**—The liability in relation to a negotiable instrument accrues by or from delivery. Ordinarily the presumption is in favour of unconditional delivery (*p*). But as between the immediate parties it may be shewn that the instrument was delivered conditionally or only for a special purpose and not for transferring absolutely the property therein (*p*<sup>1</sup>). There is no difference in substance but only in illustration and application between this section and proviso 3 to Sec 92 of the Indian Evidence Act (*q*). The view once held in an Allahabad case that a promote being an unconditional promise to pay on demand would contravene the provisions of section 92 of the Evidence Act if a party were allowed to prove that the promise to pay was conditional (*r*) stands discarded and the defendant can prove a separate oral agreement that certain condition precedent to the delivery which completes the contract and gives rise to the liability under a promote must be complied with (*s*). Here the delivery of the instrument is conditional and the written contract itself, *i e*, the promise to pay is not conditional. When, therefore, an instrument is delivered on condition that liability under it will

(*l*) Section 57, *post*

(*m*) *Ancona v Maris*, (1862) 31 L J Ex 163

(*n*) *Bhawanji v Devji*, 19 Bom 635, *Koti Venkataramiah v Official Assignee*, 33, Mad 196

(*o*) B of E Act, see 21 (2)

(*p*) 3 Q B D 325

(*p*<sup>1</sup>) *Dungar mull v Sambhu* 1951 Cal 55

(*q*) *Punjab National Bank v Balkishen*, 79 I C 461, 6 Lah L J 230, 1924 Lah 640, *Sheoprasad v Govind*, 49 All 464, 1927 All 292, *Bhogi v Kishore*, 1928 All 289, 100 I C 832, 50 All 754, *Punjab National Bank v Cotton Factory*, 1924 Lah 640, *Umaras v Ramesh*, 1939 P W N 200

(*r*) 1922 All 213

(*s*) see (*q*) *ante*

arise on the happening of a certain event, (*e.g.*, balancing of accounts of a certain transaction against the defendant) and that does not happen, there is no liability (*t*), or when the maker of a note delivered it to the payee on condition that it would be given effect to after the maker had been provided with a post and the payee failed to do so, there was no liability (*u*)

**Delivery for special purpose:**—Evidence is also admissible to prove that there was an oral agreement that the delivery of the note was made for a specific purpose only (*v*), as for instance, as a collateral security (*w*) for running accounts (*x*), or as a security for future instalments which have been paid (*y*). Endorsement for a special purpose does not pass the property in the bill when it is so intended (*x*). But when a note was given for goods and the stipulation was that the amount should be paid irrespective of the goods (*a*), or where it was given for capital of a partnership between the plaintiff and the defendant and the stipulation was that the amount should be paid irrespective of the assets of the partnership (*b*), the principle has obviously no application. If the instrument delivered to a person conditionally or for a special purpose is misappropriated by him, the owner can recover it from any holder not being a holder in due course (*c*)

**As between such parties, etc.:**—The words “as between such parties and a holder of the instrument other than a holder in due course” mean as between the maker and the payee or the endorser and any holder other than a holder in due course, or as between any of such parties and any other near or remote (*d*)

**Delivery by post:**—According to the postal regulations a letter once posted cannot be reclaimed. The post office is, therefore, deemed to be the agent of the addressee as soon as

(*t*) *Ibid*

(*u*) *Jeffries v Austin*, (1725) 1 Stra 674

(*v*) *Motilal v Dent*, 5 MIA 328, *Sheoprasad v Govind*, 49 All 464,

(*w*) *Ramanandhan v Gundu Ayyar*, 113 IC 456, 1928 Mad 1238, 1928

1927 All 262  
MWN 680, *Bhogiram v Kishori*, 50 All 754, 1928 All 289, 115

IC 771, 26 ALJ 696

(*x*) *Sheoprasad v Govind*, 49 All 464

(*y*) *Panchapakesa Ayyer v Ayyaswami Ayyar*, 107 IC 510

(*z*) *Punjab National Bank v Bal Kishen*, 79 IC 461, 6 Lah LJ 230, 1924 Lah 460

(*a*) *Radha v Alexander*, 2 Lah 335, *Macleod v Jones*, 1926 Cal 189

(*b*) *Uthra v Muthu*, 1927 Mad 68

(*c*) *Motilal v Dent*, 5 MIA 328

(*d*) *Bhogiram v Kishori*, 50 All 754, 1928 All 289, 26 ALJ 696, 115 IC 771

the letter is posted and the sender has no liability if it is lost during transmission. Therefore, where delivery is made through post a delivery of the instrument to the office is sufficient delivery to the addressee (*e*). But there must be authority—express or implied—to the sender to send it by post, otherwise the post office will not be regarded as his agent till it is actually delivered to the addressee (*f*). Thus, where the plaintiff sent a cheque in a letter by ordinary post endorsed in favour of T it was held that the plaintiff had an interest left in him in the cheque as there was no delivery (*g*).

**47.** Subject to the provisions of section 58  
 Negotiation by delivery a promissory note, bill of exchange  
 or cheque payable to bearer is  
 negotiable by delivery thereof

*Exception* —A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens

#### *Illustrations*

(*a*) A, the holder of a negotiable instrument payable to bearer delivered it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

#### NOTES

The section is to be read subject to section 58 which lays down the circumstances which disentitle a holder to recover on or to negotiate an instrument. It lays down how instruments payable to bearer are to be negotiated. Negotiation of such instrument can be effected by delivery alone, endorsement being unnecessary (*h*). Therefore, the person to whom an instrument payable to bearer is delivered becomes the holder and is entitled

(*e*) *Narasimhulu v. Adiappa*, 13 Mad 242

(*f*) *Thorappa v. Umed Malji*, 1924 Bom 205, 25 Bom L R 604, 87 I C 226

(*g*) *Juguban v. Nagar Central Bank*, 50 Bom 118, 1926 Bom 262, 28 Bom L R 226, 93 I C 619

(*h*) *Halsbury*, Vol 11 p 479

to sue in his own name Part delivery does not complete the contract (i) Payable to bearer in this section means that an instrument is expressly made payable to bearer or that it becomes so by operation of law as, (i) when an instrument originally made payable to order has the last indorsement as an indorsement in blank, (ii) when the payee is a fictitious or non-existing person

It may be submitted that both this section and the next following section seem to be superfluous in view of paragraphs 4 and 5 of the preceding section

**Position of the transferor by delivery:**—The effect of transfer by delivery of a negotiable instrument payable to bearer amounts to a sale of the instrument like the sale of goods and the liabilities of the transferor are similar to those of a seller of goods (j) As in such transfer endorsement is not necessary, his name obviously is not on the instrument, that is to say, he is not a party to the instrument and as he does not lend his credit to the instrument he is not liable to the transferee upon the instrument as such (k) He is, however, liable to the immediate transferee, like the seller of goods, for breach of the warranties which are necessarily implied in the sale of goods He warrants that the instrument which he passes is not a forged one, that it is unaltered and is what it purports to be on the face of it (l), that the parties to the instruments are competent to enter into the contract (m), that he has a good title to the instrument and has the right to transfer it (n), that he is not cognisant of any fact making the instrument valueless, i.e., that he is not aware of the bankruptcy of the parties, discharge of the instrument or of its becoming void or defunct (o) It would appear that negotiation by mere delivery entitles only the immediate party to recover in case of a breach of any of the implied warranties specified above and no subsequent holder can maintain an action against the transferor either on the instrument or on the breach of warranties as there is no privity of contract between them (p) It is clear that if the holder of a bill sent it to the market without endorsing his name upon it, neither morality nor the laws of this country will compel him to refund the money for which he sold it if he did not know, at the time he sold it, that

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(i) 29 L I B 117

(j) *Durga Verapu v Rampratap* 25 Mad 580

(k) B of Ex Act, Sections, 29, 58

(l) *Gurney v Womersley*, (1854) 24 L J Q B 46

(m) B of Ex Act, 58

(n) I Contract Act, Sec 109

(o) *Martin v Morgan*, (1819) 3 Moore, 635

(p) *Gurney v Womersley*, (1854) 24 L J Q B 46

it was not a good bill (*q*) The transferor of an instrument by mere delivery is thus in a much better position than that of a transferor by endorsement and delivery who makes himself a party to the instrument and liable to pay its value to a subsequent holder in due course in case of dishonour.

**Exception:**—For conditional delivery—see notes under section 46 (*Supra*)

**48.** Subject to the provision of section 58, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof

### NOTES

**Transfer by endorsement:**—This section which is also, like the previous one, to be read subject to section 58 of this Act, deals with the mode of transfer of negotiable instrument payable to order and is the result of an amendment by Act VIII of 1919 According to this section negotiable instruments payable to order are transferable by indorsement and delivery Neither the one nor the other done singly will be sufficient to complete the negotiation Verbal assignment of instruments payable to order is not recognised by Law Merchant (*r*) Where a note payable to the order of B is delivered by B without endorsement to C the latter does not become a holder as the negotiation is not valid even though C has paid good consideration for it In such circumstances C only acquires the ordinary right, title and interest of B and not the superior right of a holder in due course (*s*) The right of a holder in due course cannot be acquired except in accordance with the provisions of this Act (*t*) The right to sue as a holder in his own name cannot pass without endorsement (*u*), nor can he negotiate it to a third party (*v*) If there are more payees than one all must endorse it (*w*) A bill payable to B or

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(*q*) *Fenn v Harrison*, (1790) 3 TR 757

(*r*) *TARARH Chetty Firm v Solomon*, 55 IC 718, (*Contra Pannalal v Hargopal*, 51 IC 250, *Gurdit v Ibrahim*, 14 Bur LR 25)

(*s*) *Pulwan v Manu*, 66 IC 501

(*t*) *Benode v Asutosh*, 16 CWN 666, 14 IC 720

(*u*) *Akhoy v Hari Das*, 22 IC 500, 19 CLJ 335, 18 CWN 494

(*v*) *Harrop v Fisher*, 10 CBNS 196

(*w*) *Mahammad v Rangrao*, 24 Mad 654



order is delivered by B to C without endorsement. The mere fact of delivery does not warrant the inference that B authorised C to endorse it in his name nor is the latter competent to put on the bill the name of the transferor.

**Alternative mode of transfer, difference:—**This section is not exhaustive as to the mode of transfer of negotiable instruments. It only lays down the mode of transfer of such instruments according to the rules of Law Merchant. It leaves untouched the ordinary law relating to the transfer of a chose-in-action which undoubtedly the negotiable instruments are (*w*<sup>1</sup>). A transfer under the ordinary law (Transfer of property Act Section 130) will entitle the transferee, as has been stated before, to the right, title and interest of the transferor and not to the superior rights of a holder in due course which the transfer under this Act alone can confer (*x*). Such transfer must be in writing (*y*) except in places where the T P Act is not in force. There the transfer may be oral (*z*). Where an instrument was transferred without endorsement or deed of assignment the transfer was not good in law either as a negotiable instrument or as a chose in action (*a*). But sale in a court auction entitles the purchaser to sue upon the note though there is no endorsement on it (*b*). Indorsement of a non-negotiable promote coupled with delivery takes effect as an assignment of a chose in action (*c*). But where it is assigned conditionally as a security for his debt the assignee cannot sue in his own name (*d*). The payee of a promote assigns all his properties including the note to A without indorse-

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(*w*<sup>1</sup>) *Ghansyam v Raghu*, 1937 Pat 100 167 IC 57

(*x*) *Benode v Asutosh*, 16 CWN 666, 14 IC 720; *Muthu Krishna v Veeraraghava*, 38 Mad 297, *Muthur v Kadur*, 28 Mad 544, *Mahammad v Rangrao*, 24 Mad 654, *Ramchandra Rao v Venkataramana Ayyar*, 23 Mad 527, *Udayar v. Muthua*, 7 MLJ 231, *Arunchala v Subha*, 17 MLJ 393, *Narayana v Umamaheswar*, 1930 Mad 197; *Venkatarama v Krishnaswami*, 35 LW 755; *Surath v Narayan*, 38 CWN 465 1934 Cal 549, 150, IC 925; *Maruthamuthu v Kadur*, 1938 Mad 377 (FB)

(*y*) *Palawan v Kanu*, 66 IC 501, *Thorappa v Umedmalu*, 1925 Bom. 205, 87 IC TP Act, 130 to 137

(*z*) *Pannalal v Hargopal*, 51 IC 250

(*a*) *Akshay v Haridas*, 18 CWN 494; 22 IC 500, 19 CLJ 335; *Ulagappa v Ramanathan*, 1932 Lah 30, 3 LW 171, *Raman v. Nagarathna*, 11 MLT 246, (But see *Venkatadri v Lakshminarasimha*, 21 MLJ 80)

(*b*) *Kuthalingam v Packiam*, 21 MLJ 422

(*c*) *Rama v Venkatachellam*, 16 MLJ 554, 30 Mad 75, *Kanharva v Domingo*, 1 All 732, *Ramanandhan Chetty v Kathu Velan*, 41 Mad 353; *Kathavalan v Mathu Velan*, 42 IC 934

(*d*) *Nihal Chand v Ali Baksha*, 9 PR 1907

ment A or his assignee cannot sue upon the note as holders though they can compel by suit the transferor to indorse it and, after indorsement, proceed against the maker (*e*) Where the endorsement on a promissory note is of the ordinary kind, and it is not so worded as to transfer the debt itself nor has any stamp duty been paid on the endorsement, the endorsee cannot sue the non-executant coparceners on the ground of their liability under the Hindu Law (*e*<sup>1</sup>)

**49.** The holder of a negotiable instrument in blank may, without signing his own name, by writing above the indorser's signature a direction to pay other person as indorsee, convert the indorsement in blank into an indorsement in full, and the holder does not thereby incur the responsibility of an indorser

#### NOTES

This section lays down how a blank endorsement is converted into a full endorsement by any holder as sanctioned by the English law (*f*) The last clause in the section *e g.* that the holder who so converts it has not to incur any responsibility is based on the English common law (*g*). The holder of any negotiable instrument, endorsed in blank, may put, over the signature of the indorser, a direction to pay any person other than the indorser in blank By doing so he incurs no liability under the instrument as he has not to put his own signature on it The holder may also make it payable to himself The expression 'other person' in the section means any person other than the indorser in blank The following illustration will make the position clear A note is made payable to B B endorses it in blank in favour of C by merely putting his signature on the back C becomes the holder C without putting his signature writes over the signature of B "pay to D or order" By this C converts an endorsement in blank to a full endorsement by B to D And by so doing he incurs no responsibility C, if he likes, may make it payable to him or his order by an insertion to that effect

(*e*) *Pathal Ambedji v Krishnan*, 11 Mad 290, *Abhoy v Ramchandra*, 17 Mad 461, (But see *Muthur v Kadir*, 28 Mad 544)

(*e*<sup>1</sup>) *Rekapath v Dhana Chinnna*, 1939 Mad 846, 186 IC 327; *Ramnathan v Muthu*, 1942 Mad 168, 201 IC 3, 1 LR 1942 Mad 204

(*f*) B of Ex Act, Section 34 (1)

(*g*) *Vincent v Horlock*, (1808) 1 Camp 442

**Stranger drawee:**—An instrument not addressed to a drawee can be a bill of exchange, if a third person endorses an acceptance which is not inconsistent with the address. The indorsee thereupon becomes liable and is estopped from contending that he is not the drawee (*h*)

**Several blank indorsements—Effect of striking out:**—In case of a note containing several blank indorsements, the holder may strike out any such indorsement at his option (*i*). There is no provision in the Act regarding this but yet such a right exists (*j*). The effect of any indorsement being struck out is that all indorsers subsequent to the indorser whose name is struck out are discharged from liability as their remedy against the latter is impaired. But the holder may maintain an action against the drawer without striking out any blank indorsement (*k*)

**50.** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for some other specified person

#### *Illustrations.*

B signs the following indorsements on different negotiable instruments payable to bearer

- (a) "Pay the contents to C only"
- (b) "Pay C for my use"
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C"

These indorsements exclude the right of further negotiation by C

- (e) "Pay C"
- (f) "Pay C value in account with the Oriental Bank"

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others"

These indorsements do not exclude the right of further negotiation by C

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(*h*) *Jogesh v Md Ibrahim*, 1930 Cal 697, 57 Cal 695, 129 I C 305  
 (*i*) *Mar Mathu v Krishnaswami*, 17 Mad 197; *Subramanian v Alagappa*, 30 Mad 441, 1915 M W N 22  
 (*j*) *Ibid*  
 (*k*) *Veerappa v Muthuraman*, 12 L W 12

## NOTES

Not only does Indorsement followed by delivery of a negotiable instrument pass the property in the instrument to the endorsee but it also passes to him the right to negotiate the instrument further unless that right is expressly or impliedly restricted by the indorsement. The indorser has the power to restrict the right of further negotiation.

**Effect of indorsement:**—Therefore, an unconditional indorsement coupled with an unconditional delivery passes the property in the instrument to the endorsee who can, under the provisions of this Act, recover the amount from the acceptor or the indorser and those above him on dishonour (1), and can, if he likes, further negotiate it. As has been stated before, delivery must be coupled with indorsement to complete the contract. Without delivery the negotiation is not complete. To constitute a person a holder he must have possession, actual or constructive, of the document. Without possession of the instrument he cannot enforce his rights against other parties. Nor can a person maintain an action having already endorsed the instrument in favour of another. Thus, where A issues a cheque in favour of B, who endorses it in favour of C, who again, in his turn, endorses it in favour of D by an unrestricted indorsement, a suit by C against A to recover the amount, on the cheque being dishonoured, does not lie (m). The indorsee can recover from all persons whose names appear on the instrument and not from persons whose names do not appear on the instrument but who are in law liable for the debt, in other words, no person whose name does not appear on the instrument can be sued on a negotiable instrument. The name of the person or a firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand (n). The indorsee cannot sue on the original consideration but can sue on the instrument as such (o), as indorsement does not pass the right to the

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(1) Falconbridge p. 929

(m) *Golum v Radha*, 1930 Lah. 248, 122 IC 101, *Patoju v Patoju*, 23 IC 545

(n) *Sadsuk v Kishenprasad*, 46 Cal 663, 46 IA 33, 23 CWN 937, 29 CLJ 340, 50 IC 216, 21 Bom LR 605, 36 MLJ 429; 1919 MWN 310, *Ramgopal v Dharendra*, 54 Cal 380, 31 CWN 397, 1927 Cal 376, 101 IC 573; *Harimohan v Surendra*, 41 CLJ 535, 1925 Cal 1153, 88 IC 1025, *Vithal v Vithal*, 25 Bom LR 151; 72 IC 242

(o) *Ibid*, *Moung Pho v Dawood*, 66 IC 584, 11 LBR 137, *Narayan v Probhakar*, 52 Bom LR 830

consideration but only the right to the amount specified in the bill or note, for himself and in his own name (*p*) Therefore, when the managing member of an undivided Hindu family executed a promissory note the indorsee could not sue the other members of the family on the note but could proceed only against the maker of the note or his legal representative (*q*) In some cases it was held that where the debt on the promote was incurred by one member of the family for the purpose of the whole family for which all the other members were also in law, liable, the indorsee of such a note could maintain an action against all the members of the family including those whose names did not appear on the instrument, if it could be proved that the debt was incurred for the benefit of all (*r*) In view of the later decision of the Privy Council (*s*), already referred to, this appears to be no longer good law.

**Restrictive endorsement:**—Generally, indorsement, followed by delivery, vests in the indorsee of a note the right to further negotiate it, if the form of the note in its inception does not bar such negotiation or if further negotiation is not restricted by the indorsement This section applies to instruments payable to bearer or to order including cheques and is not limited to negotiable instruments payable to order (*t*). An indorsement which expressly either restricts or prohibits further negotiation of an instrument or which expressly states that it is not an absolute or unconditional transfer of the instrument but is only an authority to the indorsee to deal with it as an agent of the indorser, as directed in the indorsement, is a restrictive endorsement

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- (*p*) *Mawng Pho v Dawood*, 66 IC 584, 11 LBR 137, *Seshayya v Sanjvarayyada*, 1934 Mad 350; *Mohamed v Guana Ammal*, 66 MLJ 671
- (*q*) *Ramnathan v Muthu*, 1942 Mad 161 201 IC 3, *Kuttee Ammu v Purusotham*, 21 MLJ 526; *Sitarama v Shekiah*, 1912 MWN. 1011, *Shunmuganath v Srinivasa*, 40 Mad 727, *Mahammad v Guana Ammal*, 66 MLJ 671; *Sheshyva v Sanjvarayyadu*, 1934 Mad 350, *Ram Jas v Shahabuddin*, 1927 Lah 89, *Gurashahu v. Tangi*, 36 LW 432, *Maruthamuthu v Kadir*, 1938 Mad 377 174 IC 577 (FB)
- (*r*) *Baisnab v Ramdhan*, 11 CWN 139, *Raghunathu v Bank of Bombay*, 34 Bom 72, *Krishnand v Rajaram*, 44 All 393, *Krishna v Krishnaswami*, 23 Mad 697, *Nogendra v Amar*, 7 CWN 725, *Sanka Krishnamurthi v Laskhnikantham*, 55 Mad 692, *Nataraja v Ayyasami*, 32 MLJ 354; *Venkata v Atyam*, 41 MLJ 369, *Tikamchand v Sirdarsan*, 1933 Pat 263
- (*s*) *Sadsuk v Kishen Prasad*, 46 Cal 663, 23 CWN 937, 29 CLJ 340, 50 IC 216, 17 ALJ 405, 21 Bom LR 605, 36 MLJ 429, 25 MLT 258, 1919 MWN 310; 10 LW 143, 46 IA 33
- (*t*) *Forbes v Official Assignee*, 27 Bom LR 34, 1925 Bom 173, 86 IC 110

Plain words should be used to restrict negotiation. A cheque only crossed with the direction "account payee" is not sufficient to restrict negotiation (*u*). As will appear from illustrations (f) and (g) to this section an indorsement containing only a statement about the consideration is not a restrictive indorsement (*v*). But if an instrument payable to a certain person or bearer is endorsed by the payee to a specified person it is a valid restrictive indorsement (*w*). Where one endorses and delivers a note to his son or agent it will be a question of fact to be decided from the particular circumstances of the case whether the property in the instrument has passed by such indorsement (*x*). A bill may be endorsed to another for collection or deposited with him for some special purpose and the indorsement cannot go beyond the directions expressed in the indorsement. Such indorsements restrict further negotiation and do not pass legal title to the amount (*y*). The relation between the indorser and the indorsee in such cases is like that of the principal and agent. Except against a holder in due course it is always permissible to prove, in case of conditional delivery, or delivery for a special purpose, that the indorsement was never to pass the property in the instrument absolutely to the indorsee. As between the indorser and the immediate indorsee the terms will be binding although the terms on which the indorsement and delivery are made need not be expressly stated on the instrument. The reason is that in regard to his immediate indorsee the liability of an indorser arises out of the contract between them which is founded not merely on the indorsement itself, but also upon the delivery to the indorsee and upon the intention with which the delivery is made and accepted, as proved by words spoken or written by the parties and the circumstances, such as the usages of the place, and the course of dealings between the parties, under which the delivery takes place (*z*). The illustrations to the section give instances when the indorsement is restrictive and when not. A restrictive indorsee can maintain an action in his own name against all parties whom his indorser could sue but has not the right to negotiate the instrument unless :

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(*u*) *Konamual v Annadana*, 70 I C 586, 14 Bur L R 25

(*v*) *Sivaram v Mohideen*, 33 Mad 34

(*w*) *Forbes v Official Assignee*, 1925 Bom 193, 27 Bom L R 34, 86 I C 118

(*x*) *Ibrahim Ali v Ummat-ul Zohra*, 19 All 267 (P C), *Subramanian v Alagappa*, 30 Mad 441

(*y*) *Ibid*

(*z*) *Halsbury* Vol 11 p 519

expressly authorised to do so by the indorsement (a) Where, however, a restrictive indorsement authorises further negotiation all subsequent indorseees take the instrument with the same rights and liabilities of the first indorsee under the restrictive instrument (b) Thus, where A indorses a bill as 'Pay B or order for my use' and B endorses it to C who recovers the amount at maturity A can recover the amount of the bill from C for C received the amount at maturity for use of A as expressly stated on the instrument C in such a case is bound to pay the money even after the death of the indorser (c)

**Rights of the restrictive indorsee:—**As already stated the relationship between the indorser and the endorsee for collection is one of principal and agent The endorsee for collection is a holder under section 8 but has no title to the bill as owner and is a mere agent for collection (d) If the amount, the endorsee is authorised to collect, is paid to the indorser the endorsee cannot recover Where the amount has not been so paid he can recover even by a suit in his name (e) but he will be liable to render account for the amount recovered Where from the terms of indorsement accountability cannot be inferred between the endorser and the indorsee the indorsement is not for collection and, therefore, the endorsee alone can recover and has the right of suit (e<sup>1</sup>) The restricted endorsee takes the instrument with all the rights of the indorser except the right of negotiation, and, therefore, in a suit by the endorsee all defences available against the indorser are available against him (e<sup>2</sup>) The indorsee for collection does not lose his right of suit on the indorser's death but if he returns the note to the indorser he ceases to be a holder and in case the amount on the note is due the indorser, to whom the note has been returned, can sue for the amount without a re-indorsement in his favour (f) If a transferee of a bill returns the bill to the indorser as useless without any re-indorsement he will be deemed to have abandoned his right as

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(a) B. of Ex. Act, Sec 35 (2), *Subramanian v Alagappa*, 30 Mad 441, *Evans v Cramlington*, (1687) 2 Show, 509

(b) B. of Ex. Act 35 (3)

(c) *Ibrahim v Chas Cowie & Co*, 8 IC 967

(d) *Govindswami v Kundswami*, 1942 Mad 749 204 IC 380, *Subramanian Chetty v Alagappa Chetty*, 30 M 441, *Ibrahim v Chas Cowie & Co*, 8 IC 967

(e) *Ibid*

(e<sup>1</sup>) *Patoke v Patoke*, 23 IC 545

(e<sup>2</sup>) *Bhupat v Hari*, 5 CWN 513; *Bradley v Kirpatnik*, 39 PR 1880

(f) *Ponnaya v Palaniappa*, 7 MLT 271, *Govindswami v Kundswami*, 1942 Mad 749 204 IC 380

a transferee and cannot acquire a right to sue on it without fresh consideration even if the bill comes to his hand (*g*). An endorsee for collection may realise the money out of the assets of the maker in the hands of his sons after his death (*g*<sup>1</sup>).

A bill endorsed for collection in favour of A can be re-endorsed in favour of C which automatically cancels the previous indorsement (*h*)

A payee is competent to strike out an indorsement made by him without consideration in favour of one of the makers and sue on the note (*h*<sup>1</sup>)

**What are not restrictive endorsements:**—Instances of what are not restrictive indorsements are to be found in illustrations *e*, *f*, *g*, added to the section. It is obvious that a mere statement in the indorsement about its consideration is not a restrictive one (*i*)

**51.** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same

*Explanation*—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof

#### *Illustrations*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument

### NOTES

**Who may negotiate:**—This section mentions the persons who are competent to endorse and negotiate a document.

(*g*) *Cartwright v Williams*, (1818) 2 Stark 340

(*g*<sup>1</sup>) *Pothuraja v Appala*, 1944 Mad 500 57 L W 444

(*h*) *Daniel* Sec 699

(*h*<sup>1</sup>) *Pasupatty v Raman*, 1915 M W N 227

(*i*) *Sivaram v Mohudeen*, 33 Mad 34



Not only all persons legally competent to contract but even a minor can endorse an instrument

**Minor and Guardian:**—An endorsement by the minor will pass the title in the bill to the endorsee but will not bind him (j) The natural guardian of a minor could validly endorse on his behalf (k) even after the appointment of a court guardian but before his furnishing security (l) But this decision has been overruled and it has been held in a subsequent case that the natural guardian cannot validly indorse before he has been appointed a guardian under the Guardian and Wards Act (m) Where the holder has become a bankrupt his assignee or receiver may indorse on his behalf The legal representatives of a deceased holder are competent to endorse (n) A maker or drawer can indorse if the instrument is payable to his order Although the section does not mention the drawee he can also endorse a bill provided it has been drawn to his order.

**Joint makers etc:**—Where there are more makers, drawers, payees etc than one, all of them should join in the endorsement to make it valid although they may make the indorsement at different times and not at the same time (o) But one of the several makers etc will be competent to endorse if he has an express authority to do so on behalf of the others (p) The principle of joint endorsement finds an exception when the several makers, payees, etc are members of a trading partnership There one partner can indorse the instrument in the name of the firm and not in his own name (q) even after dissolution of the partnership This is done under the general law of partnership by which each partner is competent to act on behalf of the firm (r) Therefore, when one of several payees who are not partners endorses a bill, the indorsement is invalid Where one of two joint payees of a note indorses it in favour of the other, the payee in whose favour the indorsement has been made can sue, not on the en-

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(j) Section 26 *ante*

(k) *Suppai v Kundswami*, 80 IC 567, 1924 Mad 617, 19 LW 560

(l) *Suba v Rama*, 40 Mad 775, 37 IC 892; 2 LW 261

(m) *Natha Venkatasaperumal v Sri Ramulu Chetty*, 49 Mad 809, 1927 Mad 36; 51 MLJ 726, 99 IC 213 (FB)

(n) Section 57 *post*

(o) *Annamali v Muthia*, 1922 MWN 203, 1922 Mad 210, 70 IC 690

(p) *Carvick v Vickery*, 2 Dong 653

(q) *Chettiar v Munyandi*, 139 IC 460, 1932 Rang 97 (see also notes under section 27)

(r) I Contract Act, Sec. 263

dorsement, but as an assignee of a chose-in-action by virtue of the indorsement operating as a transfer of his interest in the note (*s*) An agent can endorse for his principal (*t*) but he will be held personally liable if he does not endorse as such (*u*) A court may endorse as an agent of the holder under Order 21 R 80 of the Code of Civil Procedure

**By strangers:**—A stranger cannot endorse a bill (*v*), but if he does so, he may be liable as a guarantor (*w*) Lawful possession is necessary for endorsement To be a holder in possession of the instrument one must have a right to the possession of the instrument in his own name When a maker is in lawful possession of the instrument it is presumed that he is the lawful owner thereof and therefore competent to endorse (*x*)

## 52. The indorser of a negotiable instrument may,

Indorser who excludes by express words in the indorse-  
his own liability or makes ment, exclude his own liability  
it conditional thereon, or make such liability or  
the right of the indorsee to receive the amount due  
thereon depend upon the happening of a specified event,  
although such event may never happen

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him

### Illustrations

(a) The indorser of a negotiable instrument signs his name adding the words—

“Without recourse”

Upon this indorsement he incurs no liability

(b) A is the payee and holder of a negotiable instrument Excluding personal liability by an indorsement “without recourse,” he transfers the instrument to B, and B indorses it to C, who indorses it to A A is not only reinstated in his former rights, but has the rights of an indorsee against B and C

## NOTES

This section deals with conditional or qualified endorsement as distinct from restrictive endorsement which relates to the

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- (s) *Mahammad v Rangrao*, 24 Mad 654, 657
  - (t) *Chettiar v Munyandi*, 139 IC 460, 1932 Rang 97
  - (u) *Veerayan v Ponnusami*, 36 Mad 362
  - (v) *Thakurdas v Kishendas*, 76 IC 282, 1925 Sind 9
  - (w) *Ibid*
  - (x) *Muthiar v Kader*, 28 Mad 544, 15 MLJ 384

negotiability of an instrument The conditions referred to in this section have nothing to do with the negotiability of an instrument It is important to note that the section relates only to the endorsement and not to the making or drawing of an instrument for the obvious reason that neither the making nor the drawing of a negotiable instrument can be conditional, as the first *sine qua non* of such an instrument is that it must contain an unconditional undertaking or order to pay (y)

**Qualified indorsement:**—While the maker of a note or the drawer of a bill can impose no condition for payment the indorser is in a much better position than either of them and can by express words altogether exclude or limit his liability to the endorsee as indicated in the illustrations to the section His liability to the endorsee will be regulated by the nature of his endorsement He may altogether negative his own liability by adding to his endorsement the words “without recourse” “*Sans* recourse”, “at his own risk”, “not liable in case of non-payment” or words to that effect sufficient to indicate his meaning In such cases he, as an endorser, will not at all be liable to the endorsee But this does not absolve him absolutely from all liabilities He will still be liable as a mere transferor by delivery These endorsements do not indicate that the parties are conscious of any defect in the security

**Conditional endorsement:**—Without, however, altogether excluding his own liability the endorser can by express words in the endorsement limit his own liability or the right of the indorsee to receive the amount from any party by adding conditions, precedent or subsequent If a condition precedent is added as, payable on the indorsee attaining 21 years, his liability to pay will arise after the condition is fulfilled and not before *i.e.* after the endorsee attains 21 years Similarly, the payment can be made dependent on the happening of an event as “on the indorsee marrying B” which may never happen In that case his liability will stand extinguished If the condition be subsequent, as when a bill is endorsed as “Pay to A or order, unless, before payment, I serve you with a notice to the contrary”, the title of the endorsee to recover will be defeated if such a notice is given to the maker of the note before payment If no such notice is given he shall recover The endorser can also limit the right of the endorsee to recover the amount from the maker or any prior party to the instrument by adding conditions similar to the above

After a qualified or conditional endorsement is made each subsequent endorsee takes the instrument subject to the same qualifications or conditions. Where the conditions stipulated do not happen and the right of the endorsee to recover is defeated he cannot sue either the endorser or any prior party thereto as title to the instrument does not pass to him before the conditions are fulfilled.

**Facultative endorsement:**—Just as an endorser can exclude or limit his liability he can also enlarge the same by adding appropriate words to that effect in his endorsement. As for instance, he can waive presentment or notice of dishonour he is ordinarily entitled to (z)

**Notice of conditions:**—An acceptor of a bill or a note is bound to take notice of the condition of indorsement as he is bound by the conditions imposed and cannot pay unless these are fulfilled. Thus, where a bill was made payable to the endorsee on certain conditions and subsequently passed through several hands and was afterwards paid by the acceptor before the conditions were fulfilled the acceptor was held liable to pay the bill again to the payee (a)

**Back negotiation:**—Ordinarily where a note is negotiated back to a prior party he cannot enforce payment against intermediate parties to whom he was originally liable. Thus, A endorses a note to B or order. B endorses it to C and C to D. D again endorses it back to A. A being originally liable to B, C, D cannot enforce payment on the note against them. But the rule enunciated in the last clause of this section is an exception to this general rule. Here A can proceed against all the intermediate parties on the ground that having endorsed the instrument "*Sans recourse*" he incurred no liability to his endorsee and other subsequent endorsees and, therefore, by negotiating the note back to him all of them become liable to him and he can recover from them (b)

**53.** A holder of a negotiable instrument who  
 Holder deriving title from holder in due course  
 derives title from a holder in due course has the rights thereon of that holder in due course

(z) *Halsbury*, Vol II p 506, B of Ex Act, sec (2)

(a) *Robertson v Kensington*, (1811) 4 Taunt 30

(b) *Wilkinson v Umm*, (1881) 7 QBD 636, *In re Gooch*, (1921) 2 KB 593

## NOTES

In the corresponding section of the English Bills of Exchange Act an important qualification has been added to the holder whose position has been dealt with here. There the holder "who is not himself a party to any fraud or illegality" affecting the instrument (c) has all the rights of a holder in due course from whom he derives his title. This is presumably the law in India, although the section is silent on this point, as no party can be allowed to reap the advantage of his own fraud (d). The section has, therefore, to be read subject to this important qualification.

**Rights of transferee of a holder in due course:—**

Ordinarily the transferee acquires all the rights of the transferor (e). Even a transferee for no consideration acquires the rights of the transferor and can sue the maker but cannot have the rights of a holder in due course (f). A holder in due course acquires the instrument free from all defects and he also conveys the same title to his transferee who becomes the holder and steps into the shoes of the transferor. Once an instrument passes through the hands of a holder in due course it continues free from all defects in the hands of a subsequent holder who acquires title of unimpeachable character even if he is aware that a defect once existed but he was not a party to it (g). If the subsequent holder gives value for the bill he can sue all the parties to the bill, but if he has paid no value to this transferor he can sue all others except the transferor (h).

**54.** Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order

## NOTES

It is open to any endorsee as being the payee named in the endorsement, just as it was open to the original payee, to endorse

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(c) B of Ex. Act, section 29 (3)

(d) *Daniel*, Sec 803

(e) *Vindamuni v Kamaka*, 1 IC 621, 5 MLT 300

(f) *Ranglal v Amolak Chand*, 1933 Lah 1014, 147 IC 679

(g) *Ardeshr v Khoshaldas*, 32 Bom 247, 10 Bom LR 268, *Subrao v Sitaram*, 2 Bom. LR 891, *Vindamoni v Kamaka*, 5 MLT 300, 1 IC 621

(h) *Master v Ibbenson*, (1849) 8 CB 100

an instrument payable to order in blank and so make it payable to bearer (i) Thus, an instrument originally payable to order, if endorsed in blank, can become a bearer instrument as there is no distinction between an instrument endorsed in blank and one payable to bearer (j) A bill payable to a certain person, if crossed, cannot be paid to bearer but will be paid to the payee named (k) As the section relates only to the endorsement in blank and not to the making of a negotiable instrument payable to bearer, it applies to promissory notes as well notwithstanding the provisions of the Paper Currency Act now the Reserve Bank Act The reason is that the provisions of the aforesaid Act bar the *making* of a note payable to bearer on demand but do not bar an indorsement in blank of a note payable to order on demand although the ultimate effect of such endorsement will be the same as the making of a note payable to bearer on demand (l)

**55.** If a negotiable instrument after having been indorsed in blank is indorsed

Conversion of indorsement in blank into indorsement in full

in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person

### NOTES

The marginal note of the section has not been correctly stated The section does not deal with the effect of *conversion* of an endorsement in blank into an endorsement in full but with the effect of an endorsement in blank *followed by* an endorsement in full If a bill is endorsed in blank and the blank endorsement is followed by an endorsement in full, the bill is nevertheless payable to bearer as against all parties prior to the endorser in full, but as against the indorser in full the bill cannot be enforced except by his endorsee or by some one who has acquired his title through such endorsee by means of

(i) *Halsbury* vol 11 p 480

(j) *Subrao v Sitaram*, 2 Bom LR 891; *Jetha v Ramchandra*, 16 Bom 689, *Nanakchand v Erskine*, 9 PR 1906, 19 PLR 1906, *Ramanadhan v Gundu*, 1928 MWN 680, 1928 Mad 1238, 113 IC 466, *Sona v Moona*, 22 IC 77; 7 LBR 70, 7 Bur LT 96

(k) *House Property Co v London Country Westminster Bank*, 1915 WN 247

(l) *Sona v Moona*, 22 IC 77, 7 LBR 70, 7 Bur LT 96

an indorsement and not by mere delivery (*m*) Thus, a bill is endorsed in blank by A to B B endorses it in blank to C C endorses it in full to D or order D without endorsement delivers it to E Now E can sue A and B but not C and D But D instead of delivering the bill without endorsement does so with an endorsement E can sue A,B,C,D who are all prior parties (*n*)

**56.** No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance

## NOTES

The section prohibits the transfer of only a portion of the amount payable under a negotiable instrument but is no bar to a transfer of the whole-balance payable at the time under the instrument to one or more persons jointly A partial endorsement would cause inconvenience to prior parties, cause multiplicity of actions and interfere with the free circulation of the instrument (*o*)

**Effect of full and partial endorsement:—**To be valid the endorsement must be for the full amount due and not for a part, although the full amount due at the time may be only a part of the whole originally covered by the instrument, some amount having been paid before If an endorsement is made only for a part of the amount due at the time, or if the endorsement is for the full amount but it is made to two persons severally and not jointly so that each becomes entitled to a part, the endorsement offends against this section and is invalid (*p*) If a portion has been already paid, there must be an endorsement to that effect on the instrument If such payment is not endorsed the transferee can recover the whole amount of the

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(*m*) *Forbes v Official Assignee*, 27 Bom LR 34; 1925 Bom 173, 86 IC 118

(*n*) *Walker v Macdonald*, (1848) 17 LJ Ex 377, *Smith v Clarke*, (1794) 1 Peake 295

(*o*) *Jaichand v Sarder Singh*, 44 IC 264, 150 PLR 1917, 5 PWR 1918, Byles on Bills (19th Ed) p 157

(*p*) B of Ex Act, Sec 32 (2).

instrument When payment of a certain amount has been made and the payment has not been endorsed on the note but the note is indorsed in favour of B for the balance, due after the payment, the indorsement is invalid as being for a part only Where, however, the holder of a note after realising some money, which was not endorsed on the note, fraudulently negotiated it for full value, it was held that the endorsee could recover the full value as the person paying enabled the fraud to be committed by not insisting on the payment being endorsed (*q*) Similar will be the result if the amount is paid in full but the bill is allowed to remain with the holder without endorsement of the payment and the holder, taking advantage of the position, fraudulently endorses the same (*r*) An instalment note cannot be endorsed except for the whole amount irrespective of any instalment (*s*) Endorsement of the whole amount to one person in parts is invalid (*t*) Under a partial endorsement, right of suit does not arise as the endorsement is invalid as a negotiation But the endorsee may recover the amount for which the endorsement is made and has a lien on the note for such amount (*u*)

**57.** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered

Legal representative cannot by delivery only negotiate instrument indorsed by deceased

## NOTES

In the case of an instrument payable to order, endorsement and delivery are both necessary for negotiation (*v*) It may so happen that a person endorses a note but dies before delivery Can his legal representatives complete the contract by doing what remained to be done by their predecessor *ie* by delivering the note to the endorsee? No The section enjoins that such negotiation will be invalid The legal representatives of the deceased who succeed to the property in the note have to negotiate it by fresh endorsement and delivery In other words,

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- (*q*) *Vithaldas v Indraveloo*, 29 IC 936, 8 LBR 202, 8 Bur LT 161
  - (*r*) *Nash v Freville*, (1900) 2 QB 72
  - (*s*) *Byles on Bills* (19th Ed) p 157
  - (*t*) *Daniel*, Sec 668
  - (*u*) *Heilbut v Nevill*, (1869) LR 4 CP 354, *Daniel*, Sec 668
  - (*v*) Section 48 (*ante*).



in such cases endorsement by the legal representatives before delivery is necessary for negotiation (*w*) The legal representatives, which means the sole heir, or if more than one, the whole body of heirs, executors or administrators of the deceased, can by the indorsement exclude their personal liability, otherwise they will be personally liable (*x*) A legatee is not a legal representative The legal representative is not an agent of the deceased A legatee, therefore, cannot acquire any interest in a promissory note executed in favour of an executor who, after his discharge, hands it over to the legatee without an endorsement, as transfer without endorsement does not convey any interest, the property remains in the legal representative and the legatee not being a holder cannot endorse (*y*) Where, however, an instrument is delivered by a person before death without making any endorsement the legal representatives can be compelled by suit to make the endorsement (*z*) A trustee can endorse, or can sue on a promote in favour of his predecessor in title without assignment or endorsement, as a trustee is a legal representative (*a*)

### 58. When a negotiable instrument has been lost

Instrument obtained by or has been obtained from any  
unlawful means or for maker, acceptor or holder thereof  
unlawful consideration by means of an offence or fraud,  
or for an unlawful consideration, no possessor or  
indorsee who claims through the person who found or  
so obtained the instrument is entitled to receive the  
amount due thereon from such maker, acceptor or  
holder, or from any party, prior to such holder, unless  
such possessor or indorsee is, or some person through  
whom he claims was, a holder thereof in due course

### NOTES

The section deals with the effect of possession of a lost instrument and of instruments obtained by fraud, for unlawful consideration, or by an act which constitutes an offence under the law of the land Under the ordinary law a person cannot

(*w*) *Bromage v Lloyd*, (1847) 1 Ex 32

(*x*) Section 29 (*ante*)

(*y*) *Kuppusami v Narayansami*, 44 MLJ 510, 1923 Mad 593, 17 LW 676, 70 IC 670, 1923 MWN 323

(*z*) *Ibid*

(*a*) *Ramanadhan v Katha Velan*, 41 Mad 353; 33 MLJ 627, 22 MLT 458, 1917 MWN 843, 6 LW. 753, 42 IC 934

transfer a better title than he possesses. But in the case of negotiable instruments, in certain cases, one having a defective title to the property in the instrument can pass an absolutely unimpeachable title to the transferee. A finder of an ordinary article is a bailee for the true owner (*b*) and the latter, on sufficient identification, can recover it not only from the finder but even from his transferee, bona fide or otherwise. The case is, however, different in the case of some negotiable instruments.

Negotiable instruments payable to bearer are transferable by mere delivery and no indorsement is necessary. When the finder of such an instrument passes it to another who takes it bona fide for value he becomes a holder in due course and the real owner cannot recover it from him or any one claiming through him (*c*). The defence of unlawfulness of consideration is admissible only against an immediate party but not against persons claiming through him (*d*). This special privilege has been conferred on the holder in due course to make his position certain against all possible claims, uncertainty is opposed to the fundamental principle of the Law Merchant whose function is to give currency to these instruments for facility of trade and commerce by protecting the interest of bona fide dealers for value. It would, therefore, seem that in such cases it is the bona fide that counts. Without bona fides the transferee cannot be a holder in due course and, therefore, cannot resist the claim of the real owner. A holder in due course holds the instrument free from all defects and conveys a similar title to others.

**Applicability of the section:**—The section applies only to cases of defect in title and does not apply where there is a total absence of title at the inception (*e*), nor does it apply where the instrument has not been *obtained* by any offence but an offence has been committed in connection with the instrument itself, *e g*, antedating an endorsement which is not an offence committed for *obtaining* the instrument (*f*). When an endorsement was antedated with the fraudulent intention of causing loss to the defendant by making him liable for an amount exceeding what law permitted it was held that although section 58 did not directly apply the forged endorsement had no legal effect and the plain-

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(*b*) I Contract Act, section 71

(*c*) (1813) 4 Taunt 799

(*d*) Chalmers (10th Ed) p 120

(*e*) *Mercantile Bank v Caero*, 52 Bom 807, 1928 Bom. 434, 30 Bom. LR 1222, 112 IC 824.

(*f*) *Nallaya Gounden v Palani Goundun*, 1926 Mad 1154, 1926 MWN. 726, 98 IC 308

tiff endorsee had no right to sue and only the true owner could sue (*f*<sup>1</sup>)

**Lost Instruments:**—If an instrument is lost from the custody of a holder the finder has no title to it and the holder can recover the instrument from the finder. Even if the finder receives any money on the instrument from the acceptor or the maker he will be deemed to have received the amount on behalf of the real owner and he cannot keep the money to himself.

As has already been noticed negotiable instruments are transferable in two ways. Instruments which are payable to bearer can be transferred by mere delivery (*g*) and instruments which are payable to order can be transferred by endorsement and delivery (*h*). When an instrument negotiable by mere delivery is lost and the finder passes it to another and the latter takes it *bona fide* for value he becomes a holder in due course and he can compel prior parties to make payment to him and the real owner, in such cases, will not be competent to recover from him (*i*).

This special privilege is conferred on the holder in due course even against the real owner in case of lost instruments by the Law Merchant. The transferee in such cases must prove that he is a holder in due course (*j*). But where the instrument is negotiable by endorsement and delivery the position will be different. There the finder cannot negotiate it without endorsement and there having been no endorsement in his favour any endorsement he may make will amount to forgery, a forged endorsement which is a nullity can convey no title and the subsequent holder cannot claim to be a holder in due course (*k*). A payment to a wrong person under a forged endorsement is no payment and does not discharge liability to the true owner (*l*).

**Stolen instruments:**—The position of stolen instruments in the hands of the thief and subsequent holders is exactly similar

(*f*<sup>1</sup>) *Vangala v Swaparupa*, 1944 Mad 471 1944 MWN 426; 57 LW 390

(*g*) Section 47 *ante*

(*h*) Section 48 *ante*

(*i*) *Raphael v Bank of England*, (1855) 17 CB 161, *London Joint Stock Bank v Simmons*, (1892) AC 201, *Bank of Bengal v Mendes*, 5 Cal 654, (1813) 4 Taunt 799

(*j*) See 118 *post*, *Ramanandan v Gundu*, 1928 Mad 1238, 1928 MWN 680, 113 IC 466

(*k*) *Mercantile Bank of India v Mascarenhas*, 30 Bom LR 1210, 52 Bom 792, 1928 Bom 407, 54 CLJ 419, 1932 PC 22, *National Bank v Caero*, 52 Bom 807, 1928 Bom 436; 30 Bom LR 1225; 112 IC 824, *Hansraj v Ruttonji*, 24 Bom 65

(*l*) *Thorappa v Umed Malji*, 1924 Bom 205, 25 Bom LR 604, 87 IC 226

to that of the lost instruments. If the instrument is a completed instrument payable to bearer and it passes from the custody of the thief to a holder in due course the latter can retain it and enforce payment against all prior parties (*m*), but if it is payable to order and there is no endorsement on it, or if the document is not complete when it is stolen no title will pass (*n*). If, however, a person entrusted a blank paper with his signature to an agent or a third person to fill up the blanks in a particular form and the latter, contrary to the instructions or in breach of the particular purpose for which it was given, wrote out the instrument and negotiated it for value to a bona fide holder, the person who so entrusted the blank paper will be bound to the holder in due course (*o*).

**Forgery:—**The section deals with the effect of only obtaining an instrument by offences. It need hardly be said that forgery is an offence and a forged instrument confers no title to the holder. Is then forgery included in the offences mentioned in the section? Under the English Law Merchant a forged signature is wholly inoperative and no right to retain the bill or to give discharge therefor or to enforce payment thereof against any party thereto can be acquired through and under that signature (*p*). But the absence of any such specific provision in the Indian Act has given rise to conflict of decisions here. It was laid down in one case that this section is not exhaustive of the offences by which an instrument can be obtained and forgery is also included in it and that once a holder is shewn to be a holder in due course he has a good title notwithstanding a forged endorsement (*q*). This view does not make any distinction between forgery and other offences or between want of title and defective title. But this case has not been followed in other cases where it has been held that a forged instrument has in the eye of law no existence at all (*r*). And the better opinion is that forgery stands on a different footing from all other offences by which an instrument may be negotiated because in the case of

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(*m*) *Bank of Bengal v Mendes*, 5 Cal 654

(*n*) *Baxendale v Bennet*, (1878) 3 QBD 525

(*o*) *Bank of Bengal v Fagan*, 7 Moo PC 61, 71

(*p*) Bill of Ex Act, Sec 24

(*q*) *Chandra Kali v Chapman*, 32 Cal 799, 9 CWN 443

(*r*) *Hansraj v Ruttonji*, 24 Bom 65, *Banku v Secretary of State*, 36 Cal 239, 1 IC 929, *Mercantile Bank v Mascarenhas*, 52 Bom 792, 1928 Bom 407, 30 Bom LR 1210, Confirmed on appeal 56 Bom 1, 1932 PC 22, 36 CWN 35, 54 CLJ 419, 58 IA 433, 136 IC 126 *Mercantile Bank v D Silva*, 52 Bom 810, *Jai Narain v Mahbub*, 28 All 428, 1 IC 1929, *Vangala v Sivaparupa*, 1944 Mad 471 1944 MWN 426 57 LW 390

forgery the party who is sought to be charged with liability cannot be accused either of negligence or any act of his, by which he helps such fraud to be committed, while in the case of other offences such an element is present (s) Where a person was induced by his clerk to draw a cheque in favour of a customer and the clerk slightly changed the initials and made it payable to a fictitious person and then took it to B who made payment and passed the cheque to his banker who collected the amount, it was held that the drawer was entitled to recover from B as he acquired no title by the forgeries of the clerk (t) Similarly, where A entrusted certain debentures to B for recovering interest and B forged A's signature and endorsed them in favour of a bank and the debentures were renewed and B obtained a loan from C and handed them over to him as security it was held that C did not derive any title by the forgeries and that A was entitled to recover the debentures (u) But in two other similar cases forgery was not allowed to nullify the contract arising out of the renewal of a bill containing a forged endorsement, in one case, on the ground that the last holder was not bound to enquire into the title of the old debentures before renewal (v), and in another case, on the ground that although forged endorsement could convey no title still the effect of the renewal was to create a fresh contract and the owner could not, therefore, claim the new debentures from the third party (w) The last two cases have been confirmed on appeal by the Privy Council (x) A careful examination of the wording of the section shews that forgery cannot be included in the offences contemplated here. According to the present section those offences must be committed in *obtaining* the document Forgery, however, is an offence which can only be committed *after* the instrument has been obtained and *not in* obtaining it In the matter of forgery the courts are left to be controlled by rules of Law Merchant as embodied in section 24 of the B of Ex Act It may be added here that even before the passing of this Act the law here was that forgery could convey no title (y) If the signature of one of the joint executants is a forgery the note is invalid (y<sup>1</sup>)

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(s) Bhysyam and Adiga (6th Ed) p 292

(t) (1924) 40 TLR 744 (CA)

(u) *Hanstaj v Rattonji*, 24 Bom 65, 74, 1 Bom LR 734

(v) *Mercantile Bank of India v Caero*, 52 Bom 807; 1928 Bom 434; 30 Bom LR 1222, 112 IC 824

(w) *Mercantile Bank v Mascarenhas*, 52 Bom 1928 Bom 407, 30 Bom LR 1210; 112 IC 824

(x) *Mascarenhas v Mercantile Bank*, 56 Bom 1 (PC) 1932 PC 22; 54 CLJ 419 36 CWN 35, 58 IA 433, 136 IC 126

(y) *Bank of Bengal v Nagin*, 7 Moore PCC 61.

(y<sup>1</sup>) *Satyanarayan v Sital*, 1934 Rang 345 153 IC 631

In the case of hundis also the principle that forgery conveys no title to the innocent transferee is applicable (z), with this difference that, according to the custom specially prevalent there, the holder of a forged hundi may get rid of his liability by producing the forger (a). A bona fide pledgee of a negotiable instrument, even when ignorant of the fact that the pledgor's title was based on a forged endorsement, acquires no rights under the pledge (b). Money given for a forged pronote can be recovered if independent evidence of the loan is adduced (c). As an ordinary rule, defence of forgery can be raised between the immediate parties. Such defence can be taken even by one who has contributed to it by his own negligence (d), but the person whose signature is forged will be estopped if, after having knowledge of the forgery, he remains silent and does not disclose the fact to the holder (e), or when, on being questioned, he admits it to be his signature (f). This doctrine of estoppel depends on the duty to disclose.

**Bill obtained by imposing on persons:**—Where an instrument is obtained from a blind or illiterate person or from a person who for certain reason cannot read the document, by having a contract read to him in such a false way that the contract read is of a different nature from the contract such a person signs, the signature thus obtained, in the absence of any negligence on the part of the person signing, is of no force as the mind of the signer did not accompany the signature. In the eye of law the signer will be deemed not to have signed the instrument at all (g). Similarly, when after the signature of a person had been obtained on a piece of paper, a note or a bill was written thereon the signature will not bind the person making it as he never signed the note or the bill nor did he intend doing so. Absence of negligence is a condition precedent to the exemption of liability in such cases of misrepresentation. Where a literate man does not intentionally read the document or where the signer

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- (z) *Thakurdas v Fateh Mull*, 7 Bom LR 275  
 (a) *Davlat Ram v Bolakidas*, 6 BHC R 24; *Hansraj v Ruttonji*, 24 Bom 65, *Thorappa v Umed Malji*, 25 Bom LR 604, 1924 Bom 205, 87 IC 227, *Madhav v Sita*, 1934 Bom 402 153 IC 959  
 (b) *Karachi Bank v Kudermal*, 1923 Sind 54  
 (c) *Moti v Mommohon*, 5 CWN 56  
 (d) *Hansraj v Ruttonji*, 24 Bom 65  
 (e) *Bhupat v Hari*, 5 CWN 313; *Kepetigalla Rubber Estate v National Bank of India*, (1909) 2 KB 1010  
 (f) *Leach v Buchanan*, (1802) 4 Esp 226  
 (g) *Foster v Mackinnon*, (1869) LR 4 CP 704, *Hem Singh v Bhagawat*, 80 IC 67; *Oriental Banking Corporation v John Fleming*, 3 Bom 242, *Banku v Kisto*, 30 Cal 433  
 (h) *Chimantam v Dewanchand*, 56 Bom 180

having full means to know the nature of the contract does not avail himself of it, he cannot complain when it has reached a holder in due course (i) When one executes a document with full knowledge of its contents but without realising the legal consequences thereof he will not be allowed to deny execution (j) In the case of a purdanashin lady the position is rather different The plaintiff, in such cases, must not only prove that the document was read over and explained to her but that she fully understood the nature and effect of the same (k)

**Coercion.**—For the purpose of a valid contract there must be free consent of the contracting parties (l) and consent cannot be free when it is caused by coercion (m) which means the committing of, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detention of, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement (n) Therefore, a contract caused by coercion is not enforceable between the parties Thus, where A was confined in a room and by show of force he was made to execute a promote in favour of B, the latter could not recover from the former (o) But if B endorsed it for value to C who without any knowledge of this fact took it bona fide, C being a holder in due course could recover it from A

**Fraud:**—Where there is fraud, free consent, which is of the essence of a contract, is lacking Fraud will vitiate all contracts Fraud generally includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed and are injurious to one or by which an undue and unconscientious advantage is taken by another (p)

Fraud is defined in the Indian Contract Act, section 17. Fraud, coercion, undue influence and misrepresentation are all separate and separable categories in law though, it is true, they

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- (i) Damal, Sec 850 to 852, (1893-1900) L B R 412  
 (j) *Dagdu v Bhana*, 28 Bom 420, 428, 6 Bom L R 126  
 (k) *Sudisht Lal v Mt Sheobarat*, 7 Cal 245 (P C), 8 I A 39, 11 CLR 113, *Shambati Koeri v Jago Bibi*, 29 Cal 749 (P C); *Krishna v Nagendrabala*, 25 C W N 924; *Satis v Kaldasi*, 26 C W N 177, *Barkatunnissa v Devi Bakah*, 31 C W N 693, *Ananda Priya v Bejoy*, 1926 Cal 43 (P C), *Lala Kalyan v Ahmaduddin*, 38 C W N 1157 (P C), *Suproshan v Narayan Singh*, 62 M L J. 649, *Akhil v Suradhani*, 65 CL J 1  
 (l) I Contract Act, Sec 10  
 (m) *Ibid*, Sec 14  
 (n) *Ibid*, Sec 15  
 (o) I Contract Act, Sec 14  
 (p) *Story's Equity*, Sec 252

may overlap or may be combined (*q*) Fraud as a cause of rescission of a contract is reducible to fraudulent misrepresentation, that is to say, misrepresentation, when fraudulent, will be a good cause for rescinding a contract and will be a good defence to an action on a negotiable instrument and the person defrauding will not be entitled to recover When the issue or any subsequent negotiation of a bill is obtained by fraud or in breach of faith, the bill is said to be affected with fraud In such cases the holder subsequent to the fraud cannot enforce payment against any party thereto, nor can retain the bill against the true owner (*r*). When an instrument is obtained by fraud even for the purpose of defrauding a third party (*s*) the person, who thus obtains it, has a defective title and cannot enforce it (*t*), but if subsequently the instrument passes to a holder in due course he can enforce it and the plea of fraud will not avail against him (*u*) When, on the representation of the plaintiff that rent was due, the defendant accepted a bill but it was eventually found that the rent was not due (*v*), or when the plaintiff, a partner, on the faith of false account papers, induced another partner, after dissolution, to execute a promissory note in his favour for an amount falsely shewn due (*w*), the plaintiff could not recover A hundi taken for advances of money on false representations knowingly made becomes enforceable before the due date expires as the plaintiff is entitled to rescind the contract immediately (*x*) Antedating or post-dating a bill is not an offence (*y*), but, if it is done for defrauding creditors, it may amount to forgery (*z*)

**Unlawful consideration:**—Consideration may be unlawful either because it is immoral and opposed to public policy, or because it is expressly or impliedly forbidden by law, or is fraudulent (*a*) An instrument given for unlawful consideration is void except in the hand of a holder in due course who can

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- (*q*) *Bal Gangadhar v Srinivas*, 39 Bom 441  
 (*r*) I Contract Act, Secs 17, 19, *Dawes v Harness*, (1875) L.R. 10 C.P. 166  
 (*s*) *Mitchell v Tennant*, 52 Cal 677, *Nallaya v Palani*, 1926 MWN 726, 1926 Mad 1124, 98 IC 308; *Mahammad v. Parameswar*, 16 MLJ 418  
 (*t*) *Kurindahammal v Kunhi Kannan*, 1930 Mad 141; 123 IC 596  
 (*u*) *Krishnappa v Adimula*, 20 Mad 84  
 (*v*) *Crew v Bevan*, (1822) 3 Stark 134  
 (*w*) *Kurindahammal v Kunhi Kannan*, 1930 Mad 141, 123 IC 596  
 (*x*) *Babulal v Joylal*, 24 Cal 533  
 (*y*) *Mitchell v Tennant*, 52 Cal 677, *Nallaya v Palani*, 1926 MWN. 726, 1926 Mad 1124, 98 IC 308  
 (*z*) Chalmers (10th Ed) p 40, *Jones v Gordon*, (1877) L.R. 2 A.C. 616  
 (*a*) Indian Contract Act Sec 23; 57 MLJ 16



enforce it against all prior parties Unlike other contracts a negotiable instrument is thus not absolutely void for unlawful consideration

**Immoral consideration:**—Agreements tending to social immorality are void Thus, a promise executed for future illicit cohabitation is void (*b*), while one executed for past cohabitation is not (*c*), provided past cohabitation did not amount to adultery which is an offence and a promise in consideration of that is unenforceable (*d*) A promise in consideration of the past cohabitation with a kept mistress is void (*e*) A promise in consideration of adultery with the consent or connivance of the husband which is not an offence is enforceable (*f*) A promise to pay a dancing girl for cohabiting with her (*g*), or an agreement made with the immediate object of applying the money for immoral purposes (*h*), or an agreement to enable her to teach a dancing girl to carry on her trade (*i*), but not to enable her to teach singing (*j*) is illegal and unenforceable When a promise is taken for money lent in the name of one's concubine's mother, in a suit by the latter, the defendant cannot plead that the consideration is tainted with immorality (*k*)

**Opposed to public policy:**—Where the consideration is opposed to public policy it is illegal and a contract including a negotiable instrument based on such consideration is void and unenforceable Agreements in restraint of trade or involving traffic in litigation or in public offices (*l*), or in consideration of inducing a woman to marry the promisor (*m*), or of giving one's

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- (*b*) *Tayamma v Sitaramaswami*, 23 Mad 613, 10 MLJ 214, *Thasir Muthunkaran v Shammuga Velu*, 28 Mad 413, 15 MLJ 286, *Lakshmi Narayan v Subhadra*, 13 MLJ 7
  - (*c*) *Dhruaj v Bikramjit*, 3 All 787; *Numberumal v Veeraperumal*, 59 MLJ 596, 1930 Mad 596, 128 IC 689, *Ganapati v Sundaraja*, 1929 MWN 828, *Husemah v Dinbai*, 25 Bom IR 252; 1924 Bom 135, 86 IC 240, *Kisendas v Dhondur*, 44 Bom 542, 57 IC 472
  - (*d*) *Hill v Clarke*, 27 All 266, *Kishnadas v Dhondur*, 44 Bom 542, 57 IC 472
  - (*e*) *Ibid*
  - (*f*) *Sita Devi v Gopal*, 1928 Pat 375, 9 Pat LT 397, 111, IC 762
  - (*g*) *Panni v Nanoo*, 18 MLJ 456
  - (*h*) *Natarajal v Subramaniam*, 45 Mad 778, 1922 Mad 181, 43 MLJ 695.
  - (*i*) 64 PR 1876; 4 PR 1867
  - (*j*) *Nusservanji v Volkert Bros*, 13 Bom 15
  - (*k*) *Ponnambala v Vasudeva*, 56 IC 616
  - (*l*) *Ledu v Hiralal*, 43 Cal 115, 19 CWN 919, 21 CLJ 537, 29 IC 625; *Saminatha v Muthsami*, 30 Mad 530, *Attar Sing v Haku*, 24 IC 692
  - (*m*) *Lowe v Peers*, (1770) 4 Burr 2225

ward in marriage (*n*), or of marriage brocage contracts (*o*), or of procuring a wife (*p*), or of bringing about an adoption (*q*), or of compounding of an offence not allowed by law (*r*) are all opposed to public policy and negotiable instruments based on such considerations are void and unenforceable between the parties. Thus, also, a loan for bribing a public officer (*s*), or a note executed to make a public officer retire from service so that his place may be occupied (*t*), or a note executed for influencing a public officer for getting some benefit (*u*), is void. A note executed by a party in favour of a commissioner appointed by a court for work done is void as the commissioner did the work for the court and not for the party (*v*). But a promise of payment in consideration of one's influence to settle a civil dispute is valid (*w*). Agreements for stifling criminal prosecutions are opposed to public policy and, therefore, a note executed for the purpose of stifling a criminal case for a non-compoundable offence (*x*) or for compounding a charge of grievous hurt caused to a person who died before any complaint could be lodged (*y*), or for abandonment (*z*), or withdrawal (*a*), of criminal prosecution for a non-compoundable offence is void and unenforceable, but it is not void if the offence is a compoundable one (*b*). A promote executed by the debtor and an outsider in consideration of a transaction involving civil and criminal liability is valid and

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- (*n*) *Venkata v Lakshmi*, 32 Mad 185 (FB)
  - (*o*) *Maung Pyo v Maung Po Gyi*, 50 IC 551, 3 UBR 119
  - (*p*) *Vaithyanatham v Gangaraju*, 17 Mad 9, 3 MLJ 132
  - (*q*) *Kothandarama v Thesu*, 27 MLJ 416, 26 IC 799, see also 4 Pat LJ 542, 54 IC 28
  - (*r*) *Jones v Permanent Benefit Society*, (1892) 1 Ch 173 (CA); *Namasivaya v Kylasa*, 7 MHCR 200, *Mahammad v Vahduddin*, 1926 All 270, 92 IC 503, *Srirangachariar v Ramasami*, 4 MLJ 106, *Kesowji v Harjwan*, 11 Bom 566
  - (*s*) *Attar Singh v Haku*, 24 IC 692
  - (*t*) *Saminatha v Muthuswami*, 30 Mad 530
  - (*u*) *Ledu v Hiratal*, 43 Cal 115, 19 CWN 919, 21 CLJ 537, 29 IC 625
  - (*v*) *Promotha v Abdul*, 37 CLJ 406, 27 CWN 430
  - (*w*) *Zahurul Huq v Shek Wazirul Huq*, 16 CWN 480, 14 IC 31
  - (*x*) *Manbar v Muktashad*, 40 Cal 113; 16 CWN 854, 16 IC 259, (PC), *Karuna Krishna v Rakhal Das*, 68 IC 721; *Sayamma v Punam Chand*, 57 Bom 678, 1933 Bom 413, 35 Bom LR 850 *Ismail v Vahduddin*, 92 IC 503, 1926 All 270, *Nazar & ors v Mt Paras*, 1923 Lah 689.
  - (*y*) *Mottai v Thanayya*, 37 Mad 385, 26 IC 181
  - (*z*) *Golam v Deoki*, 22 IC 393, 54 PR 1914
  - (*a*) *Ismail v Vahduddin*, 92 IC 503, 1926 All 270; *Kessowji v Harjwan*, 11 Bom. 566
  - (*b*) *Sundar v Bhagu*, 62 IC 70

enforcible (c), so also is a note executed by the servant in favour of his master for an amount embezzled by him under threat of prosecution (d)

There are cases in which the considerations for the contracts arise out of illegalities committed by the party to the contract. It is always opposed to public policy to encourage such considerations to form the basis of valid contracts. Thus, where, after a petition for discharge has been filed by an insolvent, he executes a pronote in favour of an opposing creditor so that the latter may withdraw his opposition (e), or where an insolvent gives preference to one creditor by executing a pronote in his favour to induce him to sign a composition deed (f) the pronote is void. An agreement to pay an amount in excess of real professional remuneration due to an attorney by his client (g), or to pay to a lawyer's clerk a special amount for special attention (h), is void as opposed to public policy. In the same way if a certain person illegally detains another's goods and takes from him a pronote for releasing them, the note is bad and unenforcible (i). It is the duty of all persons to help the administration of justice and, therefore, to give evidence when summoned by the court. A person who takes a pronote in consideration of giving evidence in court from a party cannot enforce it (j). A fraudulent combination amongst the bidders not to bid is illegal and a note passed in consideration of that is void (k). But where in consideration of an agreement, which is not fraudulent, to abstain from bidding at an excise auction a note is executed it is not void (k<sup>1</sup>). A note given for commission to the agent of the creditor is not illegal (l). According to the Indian Contract Act contracts by way of wager are void (m). Therefore, any negotiable instrument given in respect of such transactions is

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(c) *Deb Kumar v Ananta*, 35 CWN 26, 1931 Cal 421, 131 IC 133; *Radha Kishen v Sitalprasad*, 94 IC 465, *Jai Kumar v Gouri Nath*, 28 All 718, *Ah Hossain v Nazirah*, 1930 All 826; *Baderuddin v. Meherudin*, 107 IC 605, see also 129 IC 441

(d) 9 PR 1906

(e) *Krishnappa v Adimula*, 20 Mad 84

(f) *Mahammad v Parameswara*, 16 MLJ 418

(g) *Brojendra v Lakshmimoni*, 29 Cal 595, 6 CWN 816

(h) *Anantayya v Padmayya*, 16 Mad 278, 2 MLJ 247

(i) 6 CB 596

(j) *Adiraja v Vellal*, 23 IC 540, 1914 MWN 322, *Seshamah v. Ramasami* 4 MH CR 7

(k) *Chatamal v Kewachand*, 28 IC 40

(k<sup>1</sup>) *Mahadeo v Kewalram*, 44 IC 223, *Nagappa v Ah Toke*, 56 IC 963

(l) *Abdul Rahim v Raghunath*, 1931 Pat 22; 12 Pat LJ 614, 130 IC 531

(m) I Contract Act, Sec 30

necessarily unenforceable in law (*n*) But money lent on a note for payment of such debts (*o*), or to enable a party to take part in such gambling as is not expressly forbidden by law (*p*), is recoverable Where, however, money was knowingly lent for gaming by a cheque, in an action based on the consideration, it was held that the amount was not recoverable (*q*) Speculation as such is not necessarily a contract by wager, an intention to wager common to the contracting parties is necessary (*r*) When the circumstances as to the contracts for sale, purchase and delivery of goods at a given time and place are such as to warrant the legal inference that the contracting parties never intended any actual transfer of goods at all but meant only to pay or receive money between one another according as the market price of the goods should vary from the contract price at the given time, the contract is not a commercial transaction but a wager on the rise or fall of the market and where such differences in the price form the consideration for a promote the plaintiff cannot recover in a suit on the note (*s*) In order to determine whether a note or a bill is enforceable or not the point for consideration is whether the agreement is for a thing that offends against any provision of any law or will frustrate the provisions of any law In either case the claim will be unenforceable (*t*) even if the plaintiff is wholly innocent and the defendant pleads his own illegality (*u*) If any portion of the consideration is tainted with fraud or illegality the other part is not recoverable and the whole claim will fail (*v*) If, however, the illegal portion is distinct and severable, the legal portion may be allowed (*w*)

Illegality of consideration is a defence available only against an immediate party or any other party who is not a holder in due course Where the statute declares a note to be absolutely void

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- (*n*) *Joseph v Solano*, 9 B L R 441, 18 W R 424, *Damodar v Amirchand*, 8 B H C R 131
  - (*o*) *Ganjram v Jailal*, 13 I C 319, *Ramalinga v Mathu*, 29 I C 573; *Pringle v Jafar*, 5 All 443
  - (*p*) *Ramalinga v Muthu* 29 I C 573, *Subbarayya v Devandra*, 7 Mad. 301
  - (*q*) *Carlton Hall Club v Lawrence*, (1929) 2 KB 153
  - (*r*) *Bhagawandas v Burjorji*, 42 Bom 373 (P C), *Ganga v Jakison*, 25 Bom L R 520, *Sukdeodas v Govindas*, 51 Mad 96 (P C), 1928 Mad 30, 47 C L J 144, 30 Bom L R 238
  - (*s*) *Kong Yee Lone v Lowjee Nanjee*, 29 Cal 461 5 C W N 714, 28 I A 239, 3 Bom L R 476 (P C), *Kesari Chand v Merwanjee*, 1 Bom L R 263; *Ajudha Prasad v Lalman*, 25 All 38
  - (*t*) *Sadmi v Kosagam*, (1915) M W N 25
  - (*u*) *Re Mahamad and Isapanhoni*, (1921) 2 KB 716
  - (*v*) I Contract Act, Sec 24, *Srirangachariar v Ramasami*, 4 M L J. 106, *Balgovind v. Baggamal*, 35 All. 558
  - (*w*) *Robinson v Marsh*, (1921) 2 KB 640

and prohibits the issue of such a note it is void against all parties immediate or remote though it may so happen that the endorser will be liable on his endorsement to the endorsee (x)

**59.** The holder of a negotiable instrument who  
 Instrument acquired after dishonour or when overdue has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor

Provided that any person who, in good faith and for consideration, becomes the  
 Accommodation note or bill holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party

#### *Illustration*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title

### NOTES

**Position of transferee of dishonoured and overdue instruments:**—The first paragraph of the section deals with the position of a transferee of an overdue or dishonoured negotiable instrument. Ordinarily a bona fide holder for value takes the instrument free from all defects and makes all prior parties liable. An exception is, however, made in the case of dishonoured or overdue instruments. The section does not, except in the case of accommodation notes, confer upon such transferee the advantageous rights of a holder in due course. Just as a current coin circulates because it has a standing value so a negotiable instrument circulates because it carries along with it a standing unconditional undertaking to pay. When, therefore,

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(x) Chalmers, (10th Ed.) 123, *Edwards v Dick*, (1821) 4 B and Ald. 212

the instrument is dishonoured by non-acceptance or non-payment, the unconditional undertaking for payment disappears and the holder, after such dishonour, takes it subject to that risk. Similarly, when an instrument is overdue, that is, when it remains unpaid on or after the due date it naturally creates suspicion that there is something wrong with it (y) and the holder, after it is overdue, as in the case of dishonour, takes it subject to that risk. In neither case is the holder entitled to the rights of a holder in due course as non-payment ought to have set him to an enquiry disclosing the defects and the omission to enquire saddles him with negligence for which he should suffer (z). Therefore, when an overdue bill is negotiated it can only be negotiated subject to any defect of title affecting it at its maturity and thenceforward no person who takes it can acquire or give better title than the person from whom he took it had (a). A person who takes an instrument with the knowledge of dishonour or that it is overdue cannot be a holder in due course because it is of the essence of being a holder in due course that he should take it bona fide without knowledge of its defects (b). Therefore, when a person took an instrument after his agent had been informed that the money on the instrument could not be collected it was held that he took it after dishonour by non-payment (c). It follows, therefore, that the transferee or the endorsee of an overdue or dishonoured instrument takes it subject to all the equities or defects existing at the time of the transfer *eg* total or partial failure of consideration, absence of consideration, existence of condition but not a plea of set off or collateral security, and not subject to any equity that may arise subsequent to the transfer between the maker and the payee (d). That is to say, all the defences which are available against the transferor are available against the transferee who cannot acquire a better title than that of the transferor (e) unlike a holder in due course. After maturity the instrument ceases to be negotiable and a transfer only operates as an assignment (f). Where a note is endorsed after

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(y) (1807) 1 Camp 19

(z) *Annammalai v Maung Sang*, 1927 Rang 161, 5 Bur I J 241, 103 IC 189 (But see 1932 Lah 450)

(a) B of Ex Act, Sec 36 (2)

(b) *D N Saha v Bengal National Bank*, 33 CLJ 541, 47 Cal 861, 60 IC 940

(c) *Ramanathan v Gundu*, 1928 Mad 1238, 1928 MWN 680, 113 IC 456

(d) *Haray v Dhunna*, 5 Mad 108, *Arunachalan v Subramanar*, 30 Mad 235

(e) (1856) 27 L J 168

(f) *Mercantile Bank of India v Carro*, 52 Bom 807; 30 Bom LR 1222, 1928 Bom. 434

payment has been made to the endorser and the endorsee takes it without knowledge of that fact, if it is an overdue instrument, he will be unable to recover the amount by a suit on the instrument (g) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of dishonour takes it subject to any defect of title attaching thereto at the time of dishonour (h) But where a bill is dishonoured by non-acceptance and notice of such dishonour is not given the rights of a holder in due course subsequent to the omission are not prejudiced thereby (i) It is only when a person presents a hundi for payment within reasonable time, and gives notice of dishonour to the drawer, does a surety get into the shoes of a holder in due course If a surety pays the amount of a dishonoured hundi he can recover the amount from the drawer (j) A bona fide holder for value of a note payable on demand cannot be affected by any demand of which he had no notice

**Overdue instrument:**—Instruments are said to be overdue when they are not paid on or before the due date If there are days of grace in an instrument it cannot be said to be over due until the expiry of the last day of such grace and, therefore, a transfer of an instrument on the last day of grace is not a transfer of an overdue instrument (k) Although a note payable on demand is a present debt and is due and payable at once without demand for the purpose of limitation (l) and can be sued for without notice of demand (m), yet to make it overdue, demand is necessary and in the absence of any notice of demand it is not to be deemed overdue for the purpose of affecting the holder with defects of title only for the reason that a reasonable time for presenting it for payment has elapsed since its issue (n) Therefore, a note payable on demand cannot be overdue until demand or until expiry of the period fixed in a notice of demand (o) The principle of a cheque is not applicable to a promissory note (p) So when a

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(g) *Mathu v Vellu*, 35 IC 591, 4 LW 35; (1916) 2 MWN 107

(h) Halsbury, Vol 11 p 508

(i) *Ibid.*, see also 35 IC 591, 4 LW 35, 2 MWN 107

(j) *Muthu Raman v Chinnavallayan*, 39 Mad 965, 50 MLJ 369, 1916 MWN 290, 33 IC 508

(k) *Kennydy v Thomas*, (1894) 2 QB 759

(l) *Brojendra Kishore v Hindusthan Insurance*, 44 Cal 978, 25 CLJ 238

(m) 1931 Cal 140

(n) *D N Saha v Bengal National Bank*, 47 Cal 861, 33 CLJ 541; 60 IC 940

(o) *Harry v Dhunna*, 5 Mad 108, *Bolaki v Abdul*, 1923 Lah 638

(p) *Ramanathan v Gundu*, 1928 Mad 1238, *D N Saha v Bengal National Bank*, 47 Cal 861, 33 CLJ 541, 60 IC 940; *Bolaki v Abdul*, 1923 Lah. 638

person took a stale cheque without notice of dishonour or knowledge of defect of the title of the transferor who was not a holder for value and the endorsement in whose favour was fictitious, he could not recover from the drawer as the staleness of the cheque implied that payment was overdue (*q*) Indorsement after the due date confers the right, title and interest of the transferor on the transferee and if the transferor was a holder in due course the transferee also virtually becomes so Under this section the position of the holder becomes affected only if he acquires the note after dishonour So in an action by the indorsee it is not open to the maker of a note payable on demand to plead against him who is a holder in due course that he has paid the amount before the endorsement (*r*) Where the consideration has failed, the payee cannot by endorsing the note after maturity give any rights to the endorsee as against the maker (*s*)

**Position of endorsee of accommodation note:—**The proviso to this section applies only to cases of accommodation bills (*s*<sup>1</sup>) It makes an exception in favour of a transferee of an accommodation note who is entitled to recover on the note, no matter whether the transfer is made before or after maturity but only if it is for value and is in good faith Such transferee can recover from all prior parties The use of the word 'good faith' is not quite intelligible "If by good faith it is meant that the holder, when acquiring title to the overdue bill should have no notice of the accommodation character of the instrument then the proviso is not in accordance with the English law The better opinion perhaps is that it should not be acquired for the purpose of embarrassing or otherwise defrauding the the accommodating party by acting in collusion with the party accommodated, or perhaps it may mean without notice of any vicious character of the bill, such as fraud, duress or illegality of consideration" (*t*)

**60.** A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction

(*q*) *Ram Sarup v Hardeo*, 50 All 309, 1928 All 68, A L J 1091, 108 IC 144

(*r*) *Muthu v Velu*, 1916 M W N 107, 35 IC 591, 4 L W 35

(*s*) 32 IC 432

(*s*<sup>1</sup>) *Rammarayan v Ramjwan*, 165 IC 432 1937 Nag 267

(*t*) *Bhysyam and Adiga* p 319



## NOTES

**When Negotiable:**—An instrument is negotiable so long it has a subsisting liability. No liability can subsist when the instrument has been discharged. A payment or satisfaction of the instrument by the maker, drawee or acceptor at or after maturity discharges the instrument and does away with its negotiability (*u*). But where the maker of a promote payable on demand has paid the amount to the payee before there being made any demand and has not asked for the return of the promote and the note is endorsed by the payee to a third person without the knowledge of the fact of payment the endorsee is entitled as a holder in due course to sue the maker on the note as wherever one of the two innocent persons must suffer by the action of a third person he who enabled the third person to occasion the loss must sustain it. The maker of the notes ought to have asked for the return of the note under section 81 post (*v*). The contrary view expressed in an earlier case (*w*) stands overruled. To affect negotiation the payment or satisfaction should be at or after maturity and not before. A payment or satisfaction of an instrument before maturity is not a payment in due course and, therefore, cannot affect the negotiation of the instrument (*x*). And if the holder after receiving such payment endorses it for value to a bona fide transferee, the latter can recover from the maker but the maker can claim a refund from the original payee (*y*). Where an endorsee of a note payable on demand is not at the time of endorsement aware that the note has been discharged or that any demand was made, he must be deemed to be a holder in due course even if as a matter of fact the endorsement was made in his favour after the discharge (*d*).

If after payment before maturity the drawee or acceptor gets possession of the bill, the bill is said to be retired and can be recovered before and not after maturity (*a*). But if the maker pays the instrument before maturity and without

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- (*u*) *Ram Sarup v Hardeo Prasad*, 1928 All 68, 50 All 309, 25 A.L.J. 1091, 108 I.C. 144, *Muthu v Velu*, 1916 M.W.N. 107, 4 L.W. 35; 35 I.C. 591  
 (*v*) *Nunna v Vuppuluri*, 1940 Mad 631; 191 I.C. 40  
 (*w*) *Dumpala v Subbayya*, 1933 Mad 300, 1933 M.W.N. 1201; 37 L.W. 117, 64 M.L.J. 241  
 (*x*) *Annamal v Maung Som*, 5 Bur.L.J. 241, 1927 Rang 161, 103 I.C. 139  
 (*y*) *Ibid*  
 (*z*) *Venkataratnam v Kanaka Sudra*, 1936 Mad 179; 165 I.C. 432  
 (*a*) *Morley v Culverwell*, (1840) 7 M. & W. 174; *Attenborough v Mackenzie*, (1856) 25 L.J. Ex 244, *Burbridge v Manners*, (1812) 3 Camp 193

reissuing it before maturity, retains it till it matures, it is discharged and cannot afterwards be negotiated (b) Though negotiation is prohibited after payment, endorsement of some payments on the back of the note is no evidence of satisfaction or discharge and payment by the maker of the note, after such endorsed payments, to the payee, when the note is in possession of the latter, is no defence against the holder in due course (c)

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## CHAPTER V

### OF PRESENTMENT.

**61.** A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day In default of such presentment, no party thereto is liable thereon to the person making such default

If the drawee cannot, after reasonable search, be found, the bill is dishonoured

If the bill is directed to the drawee at a particular place, it must be presented at that place, and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient

### NOTES

The last paragraph of the section was added by section 4 of the N I Act, 1885 (II of 1885) The section deals with

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(b) *Harry v Dunnah*, 5 Mad 108

(c) *Muthu v Velu*, 4 L W 35, 1916 M W N 107, 35 I C 591

presentment of bills payable after sight for acceptance. Presentment means that the bill should be exhibited *ie* placed before and shewn to the drawee so that he may judge for himself whether he will accept it or not, mere notice of the existence of the bill is not sufficient to constitute presentment (d) Under section 63 post the drawee is entitled to 48 hours' time, exclusive of public holidays, to consider whether he will accept In the absence of a contract to the contrary, the rule for presentation embodied in this section applies to hundis as well (e) Under the general law, there is no specific time within which a hundi payable at sight, or payable on arrival at a particular place is to be presented This section repeats the law as it was before (f)

It is only a bill payable after sight or payable after a certain time after acceptance (g) that must be presented for acceptance, otherwise, in the absence of proof of presentment, no claim can succeed (h) Similarly, there may be a stipulation in the bill requiring payment without acceptance (i) As regards bills payable on demand or bills payable on a fixed date *eg* 60 days after date or on the date of a certain event happening presentation is not compulsory but optional with the holder (j), but it would be advisable in all cases to present the bill for the acceptance of the drawee so that the liability may be fixed on the drawee, as the holder by presenting it to the drawee can either get his acceptance which means an additional security to the bill or, in case of non-acceptance, proceed against the drawer and the other prior parties (k)

**Time for presentation:—**In a case of compulsory presentation it must be made within a reasonable time *ie* without undue delay There can be no hard and fast rule as to what period will constitute reasonable time in all cases It will depend on the circumstances of each particular case on the lines laid down in section 105 post In considering the question whether a bill has been presented within a reasonable time regard should be had to the situation and interest of both the

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(d) *Ram Sing v Golub*, 55 IC 610, 1 Lah 262

(e) *Nilkand v Menshi Apuraya*, 10 Bom. 346, *Shunmugam v Chinnasami*, 14 Mad 470

(f) *Motilal v Chogemull*, 11 Cal 344

(g) B of Ex Act, Sec 39 (2)

(h) *Sagar Mal v Bhudam Sahu*, 19 IC 251, *Nomu v Shivkissen*, 1950 Raj 55

(i) *R v Kinnear*, (1838) 2 Moo & R 117

(j) *Nandlal v Gulab Rai*, 71 IC 610, 1923 All 345, *Veerappa v Vellayan*, (1919) MWN 780, 10 LW 39, 52 IC 370, *Ram Ravi v Pralhadas*, 25 Bom 133

(k) *Ram Chandra v Lachmi Chand*, 9 Moo (PC) 46

drawer and the payee and to the distance of the place where the instrument is drawn from that where it is to be accepted and the course of dealings regarding similar instrument (l) If, after the holder had taken the bill, the exchange fell he would be justified in not presenting it till the market rose to protect himself from the loss, unless, of course, low exchange was a permanent and regular course of the market In the latter case he would have to present it with due diligence (l<sup>1</sup>) Therefore, where a hundi was drawn in Calcutta upon a firm at Joypur made payable upon arrival there and the hundi reached Joypur on the 5th April but was not presented for payment until the 29th of the month when it was dishonoured, and soon after the drawee's firm became insolvent, it was held that the hundi was presented within reasonable time and the delay did not absolve the drawer from liability (m) But where the time for presentation is specified it must be presented on the specified date In optional cases it may be circulated and presented at any time (n) But if instead of circulating, the holder locks it up for a long time he is guilty of laches (o) It may, however, be noted that the earlier the presentation the better, as delay may be attended, on the part of the drawer, with the risk of insolvency of the drawee on whom the order for payment has been made by the drawer as the latter has funds with the former (p) In all cases the presentation must be made on a business day and at business hours which are between 10 A M and 5 P M on week days and between 10 A M and 2 P M on Sundays

**Place of presentment:**—The bill is to be presented to the drawee usually at his place of residence or business unless a specified place is mentioned in the bill for presentment If a place is distinctly specified it must be presented at that place Bills which are to be present at a named place are known as 'domiciled bills'

**Proof of presentment:**—Where the presentment of a bill is compulsory presentment should be definitely proved in order to enable a party to base his claim on it (p<sup>1</sup>) In the absence of such proof, the onus of which lies on the plaintiff, the plain-

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- (l) *Moti v Chogemull*, 11 Cal 344, *Bahadur v Golub*, 1929 Lah 577, 11 Lah. 34, 116 I C 887  
 (f) *Ram Chandra v Luchmeechand*, 9 Moo (P C) 46  
 (m) *Ibid*  
 (n) *Goupy v Harden*, (1816) 7 Taunt 159  
 (o) *Mulman v D'Eguino*, (1795) 2 H Bl 565  
 (p) *Nilkand v Munshi Apuraya*, 10 Bom 346  
 (p<sup>1</sup>) *Sagar Mal v Bhudan Saha*, 19 I C 251, *Nanu v Shru Kissen*, 1950 Raj 55

tiff is not entitled to a decree (*p*<sup>2</sup>) and the plaintiff is not competent to sue on the original consideration apart from the bill

**Who can present and to whom:**—It is the holder of the bill who can demand its acceptance and, therefore, the holder or his authorised agent is competent to present it. One unconnected with the bill in either of the capacities cannot, therefore, present it for acceptance. The bill has to be presented to the drawee or his duly authorised agent or if the drawee is dead or bankrupt, to his legal representative or the official assignee as the case may be (*q*). If there are more drawees than one it must be presented to all of them.

**62.** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

## NOTES

The underlying principle governing the section is the same as what governs the previous section. A promissory note payable "after sight" means a note payable after presentment for sight (*r*), that is to say, after exhibition thereof to the maker for the purpose of founding a claim for payment (*s*). In case of a note payable after sight, presentment is necessary before demand can be made. It is a condition precedent to the demand. Until such presentment no debt becomes due and no cause of action arises until presentment for sight has been made and the time limit has elapsed (*t*). Therefore, when a holder fails or omits to make the presentation he loses all rights under it and cannot recover on the instrument but the rights of the other parties to the note remain unaffected by such default of the holder. It is only the notes payable "after sight" but

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(*p*<sup>2</sup>) *Ibid*

(*q*) Sec 75 *post*

(*r*) Section 21 *Supra*

(*s*) *Holmes v Kerrison*, (1810) 2 Taunt 323, *Dixon v Nuttal*, (1834) 1 Cr M & R 307, *Sutton v Toomer*, (1827) 7 B & C 416

(*t*) *Homes v Kerrison*, (1810) 2 Taunt 323

not notes payable "at sight" or "on demand" or "on a fixed date" or "on the expiration of a fixed period from date" that require presentment. As for reasonable time and place and time for presentment see notes under section 61.

**63.** The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time or deliberation

### NOTES

This section enables the drawee to have sometime for deliberation before taking up a liability. Although the drawee is not entitled to ask the holder to leave the bill with him as a matter of right he can only postpone his acceptance—if he accepts it at all. The ordinary practice is to leave the bill with the drawee during the period of deliberation (*u*). The period of deliberation fixed by the section is forty-eight hours exclusive of all public holidays. The word 'forty-eight' was substituted for the word 'twenty-four' by Sec 2 of Act XII of 1921. When after the period of deliberation granted by this section a bill is accepted, the acceptance dates back to the date of presentment. Presentment for acceptance must, always and in every case, precede presentment for payment and the drawer of a bill contracts that whenever the bill is duly presented, it will, subject to the provisions of this section, be accepted (*v*). The section has no application to bills the acceptance of which is not obligatory, as for instance, where a bill is not capable of being accepted (*w*). This section, read with section 83, does not apply to a hundi payable on demand. Under section 63, it is only a bill payable after sight which requires to be presented to the drawee for acceptance and it is only to such a bill that the section applies (*x*).

**Bill missing from drawee:**—When a bill is left with the drawee during the period of deliberation for acceptance and

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(*u*) *Bank of Van Dieman's Land v Bank of Victoria* (1871) 19 W.R. 857 (1871) L.R. 3 C 526

(*v*) *Ram Ravi v Pralhaddas*, 20 Bom. 133

(*w*) *Sukhlal v Eastern Bank Ltd*, 46 Cal 584

(*x*) *Nandlal v Gulab Rai*, 1923 All 345; 71 IC 610

the drawee destroys it, or does not return it, the holder can sue him either for recovery of the bill or for damages (y)

The drawee must take due care of the bill and in case of non-acceptance must return it uncanceled (z) When a bill is returned to a wrong person owing to the negligence of the holder the drawer does not become liable (a).

**64.** Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as herein-after provided In default of such presentment, the other parties thereto are not liable thereon to such holder

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient

*Exception*—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof

## NOTES

The second paragraph of this section was added by Sec 4 of the N I Act 1885 (II of 1885)

This section deals with presentment for payment which, in the case of a bill, must follow presentment for acceptance and must be at maturity and not before (b) A bill can only be presented for payment when it has been accepted and not dishonoured by non-acceptance (c) When one makes payment he has a right to the possession of the instrument It, therefore, follows that the person making the presentment for payment should be prepared and able to deliver the instrument at that time on proper receipt (d) A pleader's notice for payment is

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(y) Chalmers, (10th Ed) 165

(z) *Warwick v Rogers*, (1843) 5 M & G 340

(a) *Morrison v Buchanan*, (1833) 6 C & P 18

(b) *Jhandulal v Wilayat Begam*, 47 All 572, 1925 All 442, 23 A L J 349, 87 IC 488

(c) *Ram Ravi v Pralhaddas*, 20 Bom 133.

(d) *Ram Sing v Gulabrai*, 1 Lah 262, 55 IC 610, *Udhotam v Hemraj*, 1924 Lah 198; 72 IC 777, *Sylhet Industrial Bank v Abdul*, 50 CWN 773 81 C.L.J 373

not presentment (e) If due presentment is not made, in accordance with the rules laid down in the next following section, all parties to the bill, except the maker and the acceptor, are absolved from their liability to the holder (f).

**To whom to be presented:**—Presentation for payment of a promote should be made to the maker thereof, of a bill of exchange to the acceptor and of a cheque to the drawee. Therefore, where a note is drawn by a person on himself no presentment is necessary as obviously there is no acceptor. In case any one of such parties is dead or is adjudicated an insolvent, the presentation should be made to the legal representative of the deceased or to the assignee or receiver of the insolvent (g) Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee (h) and this makes presentment to such drawee in case of need obligatory on the holder (i)

**By whom to be presented:**—The instrument should be presented by one who is entitled to payment, that is, by the holder or by a duly authorised agent acting on his behalf. It cannot be presented by any one else In case of the death or insolvency of the holder, his legal representative or assignee can make the presentment A person who can give a valid discharge is competent to present the instrument(j)

**Necessity of presentment:**—Presentment for payment is necessary to make the endorser of a promissory note, not covered by the exception, liable to the endorsee (k) Presentation is necessary only for making liable persons other than the makers (l) Therefore, in order to make the maker alone liable no presentation is necessary as his liability, as the principal debtor, is not discharged by the holder's failure to present it at due date (m) although the other parties are

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(e) 38 M L J 4

(f) *Chandra v Chandra*, 1934 Oudh 254, *Wallabhoy v Jugnbundas*, 1936 Nag 260

(g) 60 P R 1903, Sec 75 post

(h) Sec 115 post

(i) *Bahadurchand v Gulab Rai*, 1929 Lah 577, 11 Lah 34, 116 I C. 887

(j) *Subramanian v Alagappa*, 30 Mad 441

(k) *Hemardri v Sheshamma*, 1931 Mad 116, 130 I C 477; 1930 M W N. 1232, *Kottan v Kannau*, 1950 M W N 161, (1949) 2 M L G 776.

(l) 32 I C 582, 9 S L R 150

(m) *Phulchand v Ganga*, 21 All 450, 1899 A W N 157, *Ram Krishnayya v Kassim*, 13 Mad 172, *Dargavarapu v Rampratap*, 25 Mad 580. 1889 A W N 157, *Venkata v Manikyara*, 1948 Mad. 171.



discharged by non-presentment (*n*) But where an on-demand promote or a bill of exchange is payable at a specified place and not elsewhere presentment must be made at that particular place even to make the maker of a note or the acceptor of a bill liable (*o*) If, however, the maker has made part payment no presentation is necessary (*p*)

**Effect of non-presentment:**—It has been stated before that the maker of a note and the acceptor of a bill (*q*) will continue to be liable and non-presentation will not absolve either from his liability as he is the principal debtor The view taken in an Oudh case that the 'other parties' in section 64 mean other than the holder and, therefore, presentation is necessary to make the acceptor of a bill liable (*r*) does not appear to be correct as 'other parties' cannot mean other than the holder who has no present liability It means other than the maker, acceptor or drawee to enforce whose liability no presentment is necessary (*s*) Presentation is also not necessary where the drawer and the drawee are the same person or persons (*t*) Where presentation is necessary and not optional non-presentation will have the effect of discharging all the parties other than the maker, the acceptor and the drawee (*u*) The loss of a bill or note does not excuse non-presentment (*v*) An endorser of a note payable on demand is discharged from liability to the endorsee if there is no presentment (*w*)

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- (*n*) *Ghanyalal v Karamchand*, 10 Lah 755; 115 IC 860, 1929 Lah 240, *Devidutt v Pertab*, 1933 Lah 176; 141 IC 379
- (*o*) *Jagannath v Dewanchand*, 1931 Lah 758, *Ghanyalal v Karamchand*, 10 Lah 755, 1929 Lah 240, 115 IC 860
- (*p*) *Peoples, Instalment S Bank v Ramnath*, 1933 Lah 133; 144 IC 1024; 34 PLR 804
- (*q*) *Ramkrishnayya v Kassim*, 13 Mad 172, *Durgavarapa v Rampratap*, 25 Mad 580, *Hemadri v Sheshamma*, 1930 MWN 1232, 130 IC 477, 1931 Mad 116, *Phulchand v Ganga*, 21 All 450, *Jhandu v Wilayat Begam*, 47 All 572, 1925 All 811, 23 ALJ 861; 87 IC 488; *Beneras Bank v Harmurji*, 52 All 696, 1930 All 648, 1930 ALJ 818, 125 IC 449; *Ardeshr v Khosaldas*, 32 Bom 247, 10 Bom LR 268, *Ghanyalal v Karamchand*, 10 Lah 755; 1929 Lah 240, 115 IC 860, *Dev v Pertab*, 1933 Lah 176
- (*r*) *Oudh Commercial Bank v Thakurdin*, 59 IC 604, See, also *Gayadin v Sri Ram*, 39 All 364
- (*s*) *Ghanyalal v Karamchand*, 10 Lah 755, 1929 Lah 240, 115 IC 860, *Wallabhoy v Jugybandas*, 1936 Nag 260
- (*t*) *Pachkauri Lal v Mulchand*, 1922 All 279, 44 All 554; 20 ALJ 437, 66 IC 503, *Budhu Mal v Gokal Chand*, 1926 Lah 328, 7 Lah 113, *Shankar Das v Dittoo Ram*, 1927 Lah 72; 92 IC 1015
- (*u*) *Ghanyalal v Karamchand*, 10 Lah 755, 1929 Lah 240; 115 IC 860
- (*v*) *Chandri Ram v Tej Bhan*, 1930 All 643, 72 IC 777, *Udharam v Hemraj*, 1924 Lah 198, *Wallabhoy v Jugybandas*, 1936 Nag 260
- (*w*) *Hemadri v Seshamma*, 1931 Mad 116, 1930 MWN 1232; 130 IC 477

Where a drawer countermands the order of payment non-presentment is not excused (x) In such a case no suit will lie even for original consideration (y) The burden of proof that the drawer did not suffer any loss by non-presentment of a hundi lies on the payee (z)

**Exception:—**The section is not happily worded and is apt to cause uncertainty as to the intention of the legislature It cannot be conceived that the exception was intended to override the operative portion of the section and that it can wipe out the general law enacted in the opening paragraph of the section It may be that by inserting the exception the legislature intended to lay down the rule that if an on-demand promote is payable at a specified place it must be presented for payment at that place in order to render the maker liable This would be an exception to the general rule that presentment for payment is not necessary to charge the maker (a) Where, therefore, no place for payment is specified no presentment is necessary to charge the maker (b) The meaning of the word 'place' it is, however, difficult to make out The expression is rather vague Where a note is made payable at a certain town which is not the place of residence of the maker it becomes difficult for the holder to make the presentment A town, no doubt, is a specified place (b<sup>1</sup>) But if it has no bank where is the presentment to be made it is difficult to say Where there are banks it is possible to meet the requirements of the law by presenting it to all the banks The word, place, includes places If more than one place are mentioned, there must be presentment at one or other of those places (c) In the Punjab where the promote is payable is the residential site of a revenue estate where the lender lives, the naming of it is sufficient to make the note payable only at a specified place (c<sup>1</sup>)

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(x) (1823) D & R 57

(y) *Sagar Mal v Bhudan*, 19 IC 251

(z) *Jhandu v Wilayat Begum*, 47 All 572, 1925 All 811, 23 ALJ 861, 87 IC 488

(a) *Ghanyalal v Karamchand*, 1929 Lah 240; 10 Lah 755; 115 IC 860, *Jagannath v Dewan Chand*, 1931 Lah 758, *Jurat Lal v Lal bhai*, 1942 Bom 251 203 IC 27

(b) *Ibid*, *Arjansingh v Maqbul*, 1936 Lah 799, 38 PLR 498, 164 IC 1033

(b<sup>1</sup>) *Mahamad v Abdul*, 1937 Lah 259 173 IC 175

(c) *Chegganmall v Desai Manicka*, 1926 Mad 792, 50 MLJ 242, 94 IC 384.

(c<sup>1</sup>) *Arjansingh v Maqbul*, 1936 Lah 799, 38 PLR 498; 164 IC 1033

- 65.** Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours
- Hours for presentment

## NOTES

The presentment must be made at a reasonable hour (*d*) Where the bill is payable at a bank presentment must be within banking hours (*e*) Business hours in India are between 10 A M and 5 P M on week days except on Saturday when it is between 10 A M and 3 P M These business hours vary according to the place, custom or usage of trade in the place where the instrument is to be presented and paid, and presentment must be made within the hours limited by such custom or usage Where there is no such usage or custom, the usual hours of business shall regulate the presentment Presentment for payment to be valid must be within the time set forth above, though, for the purpose of acceptance after sight, presentment may be made during unusual hours of business

**Banking hours:**—Banking hours in India are from 10 A M to 3 P M on week days except on Saturday when it is from 10 A M to 1 P M A banker is not bound to pay after the banking hours (*f*) But payment a little after the closing hour of the bank of a cheque issued at a time when it could not be presented before the closing hour is not bad (*g*) Presentment not made during the usual hours of business, or during the banking hours, is a mere nullity and discharges the indorser and other parties to the bill from liability to the holder whose negligence is the cause of such presentment (*h*)

- 66.** A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.
- Presentment for payment of instrument payable after date or sight

## NOTES

The section will apply to all instruments not payable on demand Where the bill is not payable on demand present-

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(*d*) B of Ex Act, Sec 45 (3)

(*e*) *Parker v Gordon*, (1806) East 385

(*f*) *Elford v Teed*, (1813) 1 M & S 28

(*g*) *Banas v National Provincial Bank*, (1927) 96 L J K B 301

(*h*) Section 64 *ante*

ment must be made on the day it falls due (*i*) Presentment before the due date is no presentment (*j*) A bill of exchange payable at a specified period after date must be presented for payment at maturity and the want of presentment on that date or even a day's delay exempts the endorser and other parties than the acceptor (*k*) The period is to be calculated according to sections 22 to 25 of the Act A note not payable on demand is to be presented on the day it falls due and if there are days of grace, on the last day of grace, default in such presentment exempts the indorser from liability though the maker as the principal debtor remains liable (*l*) Presentment is necessary in the case of an indorser of a hundi even where the drawer and the drawee are the same (*m*) The condition precedent to the application of this section is that the instrument must be payable at a specified period after date or sight Where, therefore, a hundi drawn on a certain day is made payable on the same day and not at a specified period after date or sight thereof, it is not governed by this section and it must be presented to the drawee within a reasonable time (*m*<sup>1</sup>)

### 67. A promissory note payable by instalments must be presented for payment on

Presentment for payment of promissory note payable by instalments

the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity

## NOTES

Non-presentment of a note when an instalment falls due discharges the indorser only as to that instalment (*n*) And non-payment of one instalment after presentment will discharge the endorser as to the instalment defaulted and not from the whole note—an instalment being by itself a separate note (*o*) But if in an instalment note there is a stipulation

(*i*) B of Ex Sec 45 (2) Cl 1

(*j*) *Jhandu v Wilayat Begum*, 47 All 572, 1925 All 811, 23 A.L.J. 349, 87 I.C. 488; *D'Sena v Nair*, 31 Mad 364

(*k*) *Benares Bank v Perya Das*, 1930 All 106, 122 I.C. 406

(*l*) *Phulchand v Ganga*, 21 All 450; 1899 A.W.N. 157

(*m*) *Sridhar v Baxiram*, 1932 Nag 55

(*m*<sup>1</sup>) *Harnam v Nikaram*, 1938 Lah 183, 180 I.C. 779

(*n*) Byles on Bills (7th Ed.) p 8

(*o*) *Ibid*

that in default of one instalment the whole shall become due the endorser, on default of one instalment and on notice of dishonour, will be liable to pay the whole (*p*)

**68.** A promissory note, bill of exchange or cheque made, drawn or accepted payable at specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place

Presentment for payment of instrument payable at specified place and not elsewhere

**69.** A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place

Instrument payable at specified place

### NOTES

The two sections may be discussed together as the principle enunciated therein is the same. The ordinary rule under which the debtor must seek his creditor for payment does not apply in the case of a negotiable instrument (*p*<sup>1</sup>). Instruments payable at a specified place and not elsewhere, must be presented for payment at that particular place in order to bind the maker or the acceptor or drawee, as the case may be, as well as the other parties thereto (*q*). If such presentment is not made, all parties to the instrument will, subject to the provision of section 76 (d) post, be discharged from liability (*r*). No presentment is valid unless it is made after maturity (*s*). The word "specified place" in section 69 means a place so particularised that the promisee can know where he must present the instrument for payment (*s*<sup>1</sup>). Where, there-

(*p*) *Carlton v Kenealy*, (1843) 16 M & W 139

(*p*<sup>1</sup>) *Dalsukh v Motilal*, 1938 Nag 262, ILR (1940) Nag 502; 182 IC 842, *Gopikisen v Jethmal*, 1935 Nag 144, 155 IC 953, *Priyara v Bhawagaban*, 1951 Punj 33

(*q*) *Ghanaya Lal v Karamchand*, 10 Lah 755, 1929 Lah 240, 115 IC 860, *Jagannath v Devanchand*, 1931 Lah 758; *Sher Mahammad v Ahammad Gul*, 1935 Pesh 132, 158 IC 89

(*r*) *Beurusteen v Usher & Co*, (1895) 11 TLR 356 B of Ex Act Sec 87 (11), *Arjun Singh v Mahammad*, 1936 Pesh 202, 166 IC 675; *Kaluram v Feroj Shah*, 1941 Pesh 45, 195 IC 185

(*s*) *Jhandu v Wilayat Begum*, 1925 All 442, 47 All 572, 23 ALJ. 349, 87 IC 488

(*s*<sup>1</sup>) *Dorabji v Jamsetji*, 1936 Bom 218, 60 Bom 796, 163 IC 300

fore, a note provides that it is payable at Bombay or Poona or elsewhere, the note is not payable only at Bombay or Poona, being payable elsewhere, that is, at a place not specified, it is not incumbent on the promisee to present it at any place (*s*<sup>2</sup>) A town is a specified place. Thus, a promissory note payable on demand at Calcutta requires presentation to render the maker liable (*s*<sup>3</sup>) The word, place, includes places. If more than one place are mentioned there must be presentment at one or other of those places and it is no defence to state that had the instrument been presented at the other place it would have been paid (*t*) If there is no place of payment in the body of the instrument but it is mentioned in a separate memorandum or in the margin of the instrument, it is not a part of the original contract and it will not be allowed by itself to control its operation. It is after all a question of intention to be gathered from the instrument (*u*) If the maker of a promissory note does not reside at the place specified in the note itself for presentment and the note is in possession of the person in whose favour it has been executed, the provision of section 69 are held in abeyance and no presentment is necessary (*u*<sup>1</sup>) Where the holder of a promissory note is able to produce and show it to the maker and return it to him on receiving payment there is compliance with section 69 of the Act (*u*<sup>2</sup>) The jurisdiction of the court is determined by the place of payment (*u*<sup>3</sup>) The section has no application where section 69 of the Partnership Act applies (*u*<sup>4</sup>)

**70.** A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence,

(*s*<sup>2</sup>) *Ibid*

(*s*<sup>3</sup>) *Arjun Singh v Maqbul*, 1936 Lah 799; 164 IC 1033, *Mahammad v Abdul*, 1937 Lah 259, 18 Lah 580, 173 IC 175, But see *Dungermull v Sambhu*, 1951 Cal 55

(*t*) *Chegun Mull v Manicka*, 1926 Mad 792, 50 MLJ 242; 94 IC 384, Daniel Sec 648

(*u*) *Pestonji v Cox*, 52 Bom 589, 55, IC 359, 1928 (PC) 213, 49 CLJ 32 30 Bom LR 1503, 113 IC 124 (PC), *Dungermull v Sambhu* 1951 Cal 55

(*u*<sup>1</sup>) *Munlal v Kalam Singh*, 1943 Lah 121, 45 PLR 133, 210 IC 91; *Mahammad v Khair*, 1937 Lah 892, 175 IC 692, *Mahammad v Abdul*, 1937 Lah 259, 18 Lah 580 173 IC 175

(*u*<sup>2</sup>) *Sylhat Industrial Bank v Abdul*, 50 CWN 773, 81 CLJ 378

(*u*<sup>3</sup>) *Nalini v Mukunda*, 51 CLJ 250

(*u*<sup>4</sup>) *Kishenlal v Abdul*, 1935 Lah 623, 160 IC 518

of the maker, drawee or acceptor thereof, as the case may be

## NOTES

The section applies only to notes and bills where no place of payment is specified and not to a cheque which must be presented to the bank on which it is drawn (*v*) Notes or bills which are not payable at a specified place must be presented either at the place of business or at the ordinary place of residence of the maker, the drawee or the acceptor thereof The section does not clearly state if in the case of a business man, his place of business is to be preferred to his residence But the use of the words 'if any' after the words 'place of business' would seem to indicate that where a man has a place of business it is to be presented at his business place where he is reasonably expected to be present during business hours and if he has no place of business, it is to be presented at his residence (*w*) The place of business is his ordinary present place of business (*x*) Under the English law bills must be presented at the place of business if that is known, if it is not known it shall be presented at his residence (*y*) Where no place of payment is mentioned but only the address is given, presentment should be made at that address (*z*)

According to local usage a hundi may be presented at the bank (*a*) Where a pronote does not mention any place where payment is to be made, it should be presumed that payment is to be made at the usual place of business of the creditor, and the cause of action arises at that place The fact that the pronote is to be presented under Sec 70 at a particular place does not imply that the amount due on it is payable at that place (*a*<sup>1</sup>)

**71.** If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment

Presentment when maker, etc, has no known place of business or residence

(*v*) Section 72 *post*

(*w*) Cp Section 94 *post*

(*x*) Daniel, Section 637

(*y*) B of Ex Act, Sec 45 (iv)

(*z*) *Buxton v Jones*, (1840) 1 M & G 83

(*a*) *Imperial Bank of Persia v Fettechand*, 21 Bom 294

(*a*<sup>1</sup>) *Nannah v Shibba*, 1939 Lah 18, 181 IC 396

for acceptance or payment, such presentment may be made to him in person wherever he can be found

### NOTES

The section deals with cases where the maker, drawee or acceptor has neither any known place of business nor fixed residence. Where no place is specified, and no address is given, the instrument may be presented at the usual place of business, if known, and if not, then at the ordinary residence, if known, of the person to make the payment. In any other case, the instrument may be presented to the person to make payment wherever he can be found or at his last known place of business or residence (b). The holder must exercise due diligence to find out the place of business or residence of the maker, acceptor or drawee as the case may be and if after due diligence he cannot find them out he can present the instrument to the person wherever he is found (c) even in the street or in a barren yard (d). Mere enquiry is not sufficient to constitute due diligence (e). What is due diligence depends on the facts and circumstances of each individual case (f).

**72.** "Subject to the provisions of section 84" a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer

### NOTES

The words within quotation have been added by section 2 of the Negotiable Instruments Amendment Act VI of 1897. The section is, therefore, to be read with section 84 *post*. Where for non-presentment within a reasonable time the drawer suffers actual damage through the delay, he is discharged to the extent of his damage (g). The reason of the rule is that a person draws a cheque upon a bank because he has funds in

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(b) Halsbury, Vol 11 p 531, B of Ex Act, Sec 45 (lv).

(c) *Crosee v Smith*, (1813) 1 M & S 545, *Udhoram v Hem Raj*, 1924 Lah 198, 72 IC 777

(d) Daniel, Sec 638

(e) 2 Str 1087

(f) 2 Str 319

(g) Halsbury, Vol 11 p 531



the bank from which he means to make payment to the payee. The latter is, therefore, required to present it immediately to the bank to take payment. If the payee defers this presentation for sometime and in the meantime the bank fails the drawer suffers loss because of the act of the payee in deferring the presentment *ie*, by his non-withdrawal of the amount from the bank. On the understanding that the payee will realise the amount from the bank the drawer takes no step to withdraw it himself from the bank and avert the loss caused by the failure of the bank. In order, therefore, to charge the drawer with liability the cheque must be presented to the bank upon which it is drawn before the bank fails or before the relation between the drawer and the bank has been altered in any other way causing loss to the drawer. As to what is reasonable time within which the presentment has to be made depends on the facts of each case (*h*)

(See notes under section 84 post)

**73.** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person

Presentment of cheque to charge any other person

## NOTES

Any person, except the drawer, means an indorser. An indorser is discharged, if the presentment is not duly made within a reasonable time after endorsement and delivery (*i*). What is a reasonable time is a question of fact in each case (*j*) and is to be determined with reference to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case (*k*). A cheque is meant for immediate payment after delivery thereof and not for circulation, and, therefore, a holder of a cheque cannot extend time for payment by indorsement and putting it on circulation. A cheque not presented within a reasonable time becomes stale and the bona fide holder of a stale cheque for consideration cannot maintain an action (*l*).

(*h*) *D'Sena v T Nair*, 31 Mad 364

(*i*) B of Ex Act, Sec 86 (*i*)

(*j*) *D'Sena v T Nair*, 31 Mad 364

(*k*) *Bahadur v Gulub Rai*, 11 Lah 34, 1929 Lah 577, 116 IC 887, *Moti v Chogemull*, 11 Cal 344, *Katsai v Doulat*, 1 Lah LJ 158, 56 IC 936

(*l*) *Ram v Hardeo*, 50 All 309, 1928 All 68, 25 ALJ 1091; 108 IC 144

**74.** Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder

Presentment of instrument payable on demand

### NOTES

In order to charge the indorser of a note, presentment is necessary and in the case of a note payable on demand such presentment must be made within a reasonable time after it is received by the holder, otherwise the indorser will be discharged (*m*) Following the principles of the two foregoing sections the loss must fall on the party and not on the drawer if the holder of the bill fails to present it with due diligence (*n*) The rule as to reasonable time is strict about cheque but not about promotes which are not intended for immediate payment (*o*) This rule for presentation should not, however, be applied with extreme stringency with respect to a continuing security (*p*) In determining what is a reasonable time for payment regard shall also, among other things, be had to the nature of the instrument A distinction is, therefore, made between notes payable on demand and bills payable on demand A note payable on demand is regarded as a continuing security and the rule of reasonable time should not be applied to it with extreme stringency (*q*)

**75.** Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee

Presentment by or to agent, representative of deceased or assignee of insolvent

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- (*m*) *Hemadri v Sheshamma*, 1931 Mad 113, 1930 MWN 1232, 130 IC 477, *Kottan v Kannan*, (1949) 2 M L J 776
  - (*n*) *Ramzan & Co v Shariff Mohamed*, 1924 Bom 520, 76 IC 588.
  - (*o*) *Jagannatha v Lakshmana*, 47 MLJ 475, 80 IC 932, 1925 Mad. 132
  - (*p*) *Srinath v Peary Mohan*, 25 CLJ 91, 21 CWN 497, 39 IC. 205, *Chartered Mercantile Bank v Dickson*, (1871) LR 8 PC. 574, 8 Moo PCC 51
  - (*q*) *Ibid*, *D N Saha v Bengal National Bank*, 47 Cal 861; 33 CLJ 541; 60 IC. 940

## NOTES

Presentment, as has been stated before, is to be made to the drawee, maker or acceptor. Similarly, presentment, where necessary, may be made to their duly authorised agent. Presentment to a banker's clerk at a clearing house is a good and valid presentment (*r*). When a hundi was presented for payment to the authorised agent of the acceptor at the bank on the due date, according to local usage, the presentment was held to be good (*s*). In a place of business an officer of the acceptor, maker, or drawee who usually attends to the business and deals with payment and realisation will be presumed to be the duly authorised agent of such persons as contemplated under this section. Where during the absence of a person abroad, a bill is presented to his wife (*t*), or to an agent at the place of business (*u*), the presentment is good. When anyone of such persons—the drawee, maker or acceptor dies, his legal representatives step into his shoes and, therefore, the necessary presentment must be made to such legal representatives (*v*). If such legal representatives be not found after reasonable search the presentment must be made at the dwelling house of the deceased (*w*). In case of insolvency of such parties presentment is not excused but is to be made to the assignee (*x*). Neither the death nor the insolvency of the maker, the acceptor or the drawee will excuse non-presentation.

**75-A.** Delay in presentment “for acceptance or payment” is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

## NOTES

This is a post-war section enacted to counteract the effects of the Great War of 1914 on the question of presentment. This

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- (*r*) *Reynolds v Chettle*, (1811) 2 Camp 595
  - (*s*) *Imperial Bank of Persia v Fattechand*, 21 Bom. 294
  - (*t*) *Cromwell v Hynson*, (1796) 2 Esp 511
  - (*u*) *Philips v Astling*, (1809) 2 Taunt, 206
  - (*v*) *Philpot v Bryant*, (1827) 4 Bing. 717
  - (*w*) Daniel Section 591
  - (*x*) *Esdaile v Sowerby*, (1899) 11 East 114

section has been added by Act 25 of 1920 and the words within quotation have been added by Act 12 of 1921. The section makes allowance for special circumstances, causing delay in presentment, over which the holder has absolutely no control as, where the payee is ill (y), or where on account of war the bill cannot be transmitted by the holder for payment (z), or a declaration of moratorium (a). In such cases delay is excused. Where owing to the loss of the hundi and refusal by the drawer to issue a duplicate, there could be no presentation, non-presentment was excused (b). Where there is delay, the holder must not be in any way a contributory to the cause. When the cause of delay ceases to operate reasonable time will run therefrom within which presentation must be made or delay will not be excused.

**76.** No presentment for payment is necessary, and the instrument is dishonoured  
 When presentment unnecessary at the due date for presentment, in any of the following cases —

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment,

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

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{y} 4 L T 467

{z} *Patience v Townley*, (1805) 2 Smith (KB) 223

{a} *Rouquette v Overmann*, (1875) LR 10 QB 525

{b} *Udhoram v Hemraj*, 1924 Lah. 198, 72 IC 777

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment,

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment

## NOTES

The ordinary rule is that a promissory note, bill of exchange or cheque must be presented for payment to the maker, acceptor or drawee by or on behalf of the holder to charge the other parties to the instruments with liability (c). This section lays down under what circumstances such presentment is dispensed with. It is noticeable that, in the circumstances under which non-presentment is excused, the party entitled to the necessary presentment must do some overt acts disentitling him to claim presentation.

**Clause (a). When presentment not possible:**—The maker, acceptor, or the drawee must do something to prevent the holder from presenting it, as where a hundi is lost and a duplicate is not supplied (d). In such a case presentment is unnecessary. When presentation is made impossible by the maker, the acceptor or the drawee, by the closing of his place of business where the instrument is made payable, or by his having no residence, known address or place of business or by his absence, or that of his agent from the place where it is made payable during usual business hours, no presentment is necessary (e). Again, where a note is payable at a specified place and on presentment there no person, authorised to pay or refuse payment, is found (f), or where the holder went to the house mentioned in the instrument but found it shut up and no one was there (g), it was held to be valid presentment. Where, the instrument is not payable at any specified place, and the maker, acceptor or drawee to whom personally, in the

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(c) Section 64 *ante*

(d) *Udhoram v Hemraj*, 1924 Lah 198, 72 IC 777

(e) *Ram v Gulab*, 1 Lah 262, 2 Lah LJ 316, 55 IC 610, *Punjab Co-operative Bank v Yusuf*, 1939 Lah 225 187 IC 650

(f) *Howe v Bowes*, (1812) 16 East 112; 5 Taunt. 30

(g) *Hine v Allen*, (1833) 4B and Ad 624

circumstances, the presentment is to be made, is not found after due search, that is to say, when there is no person to whom presentment can be made, no presentment is necessary. It is not sufficient in such cases to prove that the holder found the door of the maker's house closed. Even mere enquiry is not sufficient. The holder must prove that the maker could not be found after reasonable search and enquiry (*h*) from persons likely to know *e g* the indorsers or parties to the instrument when they can be found (*h*<sup>1</sup>). The holder must go to the place and make an attempt to make the presentment and cannot plead, as an excuse for non-presentment, that he has reason to believe that the bill will not, on presentment, be paid (*i*), or that the maker has been adjudicated an insolvent (*j*), or that the drawer has asked the drawee not to pay (*k*).

**Clause (b)—Waiver of presentment:**—It is a common place of law that a person can waive his right. When a party sought to be charged with an instrument has a right to presentment he can very well waive that right of his by express words in the instrument as, 'presentment waived,' and engage to pay the amount without presentment. But such engagement must be entered into prior to maturity (*l*). Even a prior promise by the endorser to pay the note constitutes an engagement to pay notwithstanding non-presentment (*m*). Mere demand of money does not amount to presentment. The holder must exhibit the bill to the person from whom he demands payment and offer to deliver it on payment (*n*).

**Clause (c)—Waiver after default of presentment:**—This clause specifies the cases of implied waiver. When after maturity there has been no presentment the party sought to be charged with the instrument can claim a discharge on the ground of non-presentment. But such a party will be deemed to have waived such a claim and will be liable to pay in spite of non-presentment if, with the knowledge of such default of presentment of the holder, he (*i*) does not plead non-presentment or makes part

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(*h*) *Hardy v Woodroffe*, (1818) 2 Stark 319

(*h*<sup>1</sup>) Daniel 1115

(*i*) *Banker v Birch*, (1811) 3 Camp 107

(*j*) *Warrington v Furber*, (1807) 8 East 242

(*k*) *Hill v Heap*, (1823) 25 R. R 791

(*l*) *Jhandulal v Wilayat Begum*, 47 All 572, 1925 All 442, 23 ALJ 349, 87 IC 488, *Thakur v Oudh Commercial Bank*, 23 OC 91, 57 IC 304, *Harkishore v Guru Miah*, 1931 Cal 387, 35 CWN 53, 58 Cal 752, 53 CLJ 37, 131 IC 570.

(*m*) Ibid

(*n*) *Ram v Gulub*, 1 Lah. 262, 2 Lah LJ 316, 55 IC 610

payment of the amount due on the instrument (o), or (ii) promises in writing or otherwise to pay unconditionally such amount wholly or in part (p), or (iii) waives his right in any other way precluding him from taking advantage of such plea of non-presentment. A part payment or acknowledgment of liability of the amount due under the instrument after maturity prima facie shows that the instrument was presented for payment. Such waiver can be inferred from the conduct of the drawer or the endorser (q) and can take place at any time before or after maturity (r) and even through an agent.

**Clause (d)—Where drawer and drawee same:—**Presentment for payment is dispensed with, under this clause, as against the drawer if he cannot suffer any damage for want of such non-presentment (s). When the drawer and the drawee of a hundi are the same person no presentation on the due date is necessary as the drawer cannot suffer damage from the want of presentment (t). But presentment will be necessary even in such a case if it is intended to charge the indorser in due course (u). The provisions of this clause are an exception to the general rule that presentment for payment is necessary and the burden of proving that the drawer could not suffer damage on account of non-presentment to the acceptor lies on the person who claims that his case comes within the exception and wishes to make the drawer liable in spite of non-presentment (v). It is important

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- (o) *Peoples' Instalment and Saving Bank v Ramnath*, 1933 Lah 133, *Munilal v Kalamsingh*, 1943 Lah 121 210 IC 91
- (p) *Croxon v Worthen*, (1839) 5 M and W 5
- (q) B of Ex Act, Sec 46 (e)
- (r) *Jhandulal v Wilhyati Begum*, 47 All 572, 1925 All 442, 23 ALJ 349, 87 IC 488
- (s) *Gaya v Sri Ram* 39 All 364, 15 ALJ 267, 39 IC 649, *Panchcour v Satyadhemu*, 1936 Cal 489
- (t) *Shankar v Ditto*, 1927 Lah 72, 8 Lah LJ 694, *Lachman v Ram Chandra*, 51 IC 859, *Pachkouri v Mulchand*, 44 All 554, 20 ALJ 437, 1922 All 279, 66 IC 503, *Jhandu v Wilhyati Begum* 47 All 572, 1925 All 442, 23 ALJ 349, 87 IC 488, *Budhu v Gakul*, 7 Lah 113, 1926 Lah 328, 92 IC 1015, *Kolu v Feroz*, 1941 Pesh 15 195 IC 185, *Punjab Co Bank v Yusuff*, 1939 Lah 225 187 IC 650, *Panchkouri v Satya*, 1936 Cal 489 166 IC 747
- (u) *Sridhar v Baxiram*, 1932 Nag 55
- (v) *Thakur v Oudh Commercial Bank*, 57 IC 304, 23 OC 91, *Sharmugam v Chinnasami*, 14 Mad 470, *Madhu v Durga*, 33 All 4, 6 IC 793, 7 ALJ 815, *Gaya v Sri Ram*, 39 IC 649, 39 All 364, 15 ALJ 267; *Jhanda v Toda Mal*, 10 IC 405, 173 PLR 1911; *Nanhey v Chet Ram*, 41 All 40, 48 IC 364, 16 ALJ 899, *Bhukkimal v Raghubir*, 1925 All 811; 88 IC 915, 23 ALJ 861, *Harkishore v Gura Mia*, 1931 Cal 387, 58 Cal 752, 35 CWN 53, 53 CLJ 37; 131 IC 570, *Arjan v. Maqbul*, 38 PLR 498 1936 Lah 799

to note that the words used are "drawer could not suffer" and not "has not suffered" damage. Where the drawer dishonestly denies payment of consideration and pleads that the endorsements are forgeries or made in collusion with the payee he cannot plead that due to want of presentation of the bill to the drawee he (the drawer) has suffered any damage. In such a case the holder in due course need not prove that the drawer did not suffer any damage on account of non-presentment (*w*). This clause applies where the drawer has no funds with the drawee at the time the bill is being drawn or has no reasonable expectation that the drawee will accept for his accommodation (*x*), or where the drawee is fictitious or incompetent to contract (*y*), or where the drawer has settled his accounts with the drawee before the suit by the payee and has realised his dues, so that the drawer suffers no loss by non-presentment by the payee (*z*). Presentment for payment implies previous acceptance. Therefore, when a bill is dishonoured by non-acceptance question of presentment for payment does not arise (*a*).

**Clause (d) its applicability to pronote:**—Throughout the Act a clear distinction has been made between the words 'maker' and 'drawer' the former being used in a more general sense as applying to promissory notes, negotiable instruments and cheques, while the word 'drawer' is restricted to bills of exchange and cheques only and is nowhere used in connection with promissory notes. Therefore, the operation of this clause is limited to bills of exchange and cheques and does include the maker of a promote (*b*).

But in some cases it has been held that the word 'drawer' in this clause includes the maker of a pronote and, therefore, the clause applies to a promissory note also (*b*<sup>1</sup>). It is submitted that having regard to the distinction observed in the use of the aforesaid words in the body of the Act the other view appears to be more reasonable.

**Miscellaneous:**—The principle of exemption is applicable

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- (*w*) *Bhawanji v Assan*, 1925 Sindh 241, 86 IC 357
  - (*x*) *Subrao v Sitaram*, 2 Bom LR 891, *Gendalal v Balkishen*, 1922 All 422, 70 IC 596, also 1935 Lah 413 188 IC 90
  - (*y*) *Gaya Din v Sri Ram* 39 All 364, 39 IC 649, 15 15 ALJ 267, *Nanhey Mal v Chet Ram*, 41 All 40, 48 IC 364, 16 ALJ 899
  - (*z*) *Ramjas v Sheoji Ram*, 1933 Lah 97
  - (*a*) *Ram Ravji v Pralhaddas*, 25 Bom. 133
  - (*b*) *Shankar v Narayan*, 47 CWN 658, *Mahammad v Abdul*, 1937 Lah 259, 173 IC 175, ILR 1937 Lah 580, *Mahammad v Khar*, 1937 Lah 892
  - (*b*<sup>1</sup>) *Shubnath v Biswambar*, 152 IC 1006, *Arjun Singh v Md Yakub*, 1936 Pesh 202, 166 IC 675



to an endorser also (c) although he has not been included in the section. But where the intention was that the last holder was to take the bill, previous endorser cannot be made liable without notice of dishonour (d). Whether presentment for payment is or is not necessary to charge a guarantor has given rise to a difference of opinion. It has been held that ordinarily presentment is not necessary in such cases as the guarantor is the debtor of the holder and it is his duty to seek the creditor and pay the debt when it falls due (e). But according to Daniel, the guarantor is entitled to notice of non-payment within a reasonable time after default (f) and even if presentment is not made or the notice is not given the guarantor will not be discharged if he has not suffered any loss (g). There is, however, a difference between the guarantor of the principal debtor *eg* the maker or the acceptor and the guarantor of a surety *eg* the drawer or the endorser. While in the former case no demand upon the maker or acceptor is necessary to make the guarantor liable, such demand upon the maker or acceptor is essential in the latter case (h).

## 77. When a bill of exchange accepted payable at

Liability of banker for negligently dealing with bill presented for payment

a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss

## NOTES

A person while accepting a bill may make it payable at a certain specified bank where he has an account. The bank in the absence of any previous instruction from the acceptor is not bound to honour the bill on presentment. It is optional with the bank to make or not to make the payment. The banker on the authority of the acceptance alone is entitled to honour the bill by drawing upon the funds of the drawer. If in doing so the fund of the drawer runs short and a subsequent bill is dishonoured the

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(c) B of Ex Act, Sec 46, (ii, d)

(d) *Turner v Samson*, (1876) 2 QBD 23

(e) *Walton v Mascall*, (1814) 13 M & W 72, *Carter v White*, (1882) 25 Ch D 666

(f) Daniel, Sec 1787

(g) *Shanmugham v Chinna Sami*, 14 Mad 470

(h) Chalmers (10th Ed) 479, *Walton v Mascall*, (1814) 13 M and W 72.

bank will not be liable (i) If he chooses not to make the payment he is bound to return the instrument to the holder in the same condition in which he received it The section makes the bank to whom presentment is made a bailee for the holder (j) Therefore, like a bailee the banker is bound to exercise due care to preserve and to return the document to the holder and he will be liable to compensate the holder for causing any loss or damage to the holder by his negligent or improper act (k), as for instance, negligently delivering it to a wrong person or improperly refusing to deliver it or cancelling an endorsement or acceptance by mistake etc A bona fide mistake in spite of due care will not make him liable (l)

## CHAPTER VI

### OF PAYMENT AND INTEREST

**78.** Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must in order to discharge the maker or acceptor, be made to the holder of the instrument

To whom payment should be made

### NOTES

The section mentions the persons to whom only payment should be made for discharging the maker or the acceptor It applies not only to negotiable instruments but to non-negotiable ones as well (m) It is necessary to consider not only to whom, but by whom, and when, is such payment to be made

**Time of payment.**—Payment of the amount due on an instrument may be made either before or at maturity Payment by a party to the instrument before maturity does not discharge the instrument and its negotiability does not cease It is merely a purchase of the instrument with all the rights of negotiation (n)

(i) *Kymer v Laurie*, (1849) 18 LJQB 218

(j) Chalmers (10th Ed) 116

(k) *Kushkanta v Chandra Kanta*, 1924 Cal 1056, 28 CWN 1041

(l) *Warwick v Rogers* (1843) 5 M & G 340

(m) *Subramanya v Arunachellam*, 18 MLJ 186

(n) *Ramanathan v Gundu*, 1928 Mad 1238, 113 IC 466, *Bolaqui v Abdul* 1923 Lah 638, 75 IC 958

In order to discharge the instrument the payment must be made at maturity. Otherwise the acceptor will be liable to pay it again on the instrument in the hands of a bona fide transferee for value (*o*). In the case of premature payment by the maker or acceptor he must get the instrument delivered to him so that he can make himself and all the subsequent parties liable (*p*). The questions that, therefore, require consideration are to whom and by whom is such payment as may discharge the maker or acceptor, to be made.

**To whom:**—For an effectual discharge of the instrument payment must be made to the holder thereof (*q*), or to his agent entitled to receive payment (*r*), but not to any one else even having beneficial interest in the money (*s*), for a person, who is not an indorsee claiming under a pronote, has no right to claim payment (*t*). In case of an instrument payable to bearer or indorsed in blank, payment to the person in possession of the instrument including a thief will discharge the maker or the acceptor as in such cases the person in possession is the holder but the position will be different in case of a payment to a person under a forged endorsement on an instrument not payable to order. This payment will not absolve the person from liability to the true owner who continues to be the holder (*t*<sup>1</sup>). It will thus be seen that payment made to one who is the real owner of the instrument but not the holder nor the agent of the holder will not discharge the maker or the acceptor (*u*). Even if the holder is a benamdar payment must be made to him as the negotiable instrument does not recognise benami, the holder being the person entitled in his

- (*o*) *Burbridge v Manners*, (1812) 3 Camp 193
- (*p*) *Ramanathan v Gundu*, 1928 Mad 1238, 113 IC 466, *Bolaqui v Abdul*, 1923 Lah 638, 75 IC 958, *Sriram v Venkata*, 8 MLT 247
- (*q*) *Subba v Ramasami*, 30 Mad 88, *Subramanya v Arunachella*, 18 MLJ 186, *Madan v Lal Chand*, 49 All 457 1927 All 463, 100 IC 703, *Sarat v Kedar*, 2 CWN 286, *Brojajal v Budhnath*, 55 Cal 551, 1928 Cal 148, 105 IC 149, *Harkishor v Guru Miah*, 58 Cal 752, 1931 Cal 387, 35 CWN 53, *Veleti v Gudisa*, 8 IC 355, *Surjug v Deosaram*, 1930 Pat 313, 129 IC 395, 11 PLT 255
- (*r*) *Raghunath v Radhakishen*, 1929 Lah 634, 119 IC 759, *Lackme v Madan*, 1947 All 52 226 IC 358
- (*s*) *Royal Bank v Rahim*, 49 Bom 270, 1925 Bom 369, 27 Bom LR 506, 87 IC 982
- (*t*) *Vishnu v Achut*, 1928 Nag 54; 105 IC 780
- (*t*<sup>1</sup>) *Thorappa v Umed Malji*, 25 Bom LR 604, 1924 Bom 205, 87 IC 226
- (*u*) *Subba v Ramasami*, 30 Mad 88 (FB), 16 MLJ 508, 1 MLT 377

own name to receive the payment (v) The property in the note including the right to receive and recover the amount due thereon is vested in the holder (w) Therefore, when a promote was executed in favour of a guardian of a minor for money lent from the estate of the latter, payment to the minor was held ineffectual for a discharge as the guardian was the holder of the note (x) Where two or more partners are holders of a note payment to one of them will, however, discharge the debt as each partner is an agent of the others (y) In some cases it was held that payment to one of the joint holders who are not partners was a good payment to discharge the debt under section 38 of the Contract Act (z) Similarly, payment to the manager of a joint Hindu family discharges the debt to the family (a) Although one of several joint holders or partners is competent to give a discharge, still a bank can refuse payment to such one or some of the holders after notice of dissolution of partnership or notice to withhold payment (b) It is submitted, however, that in the case of the joint holders who are not partners, in the absence of anything to the contrary in the contract itself, the right to claim performance rests jointly with them under section 45 of the Indian Contract Act and, therefore, the decisions to the contrary cited above offend against that section Where the holder elects to treat payment to a non-holder as a discharge, the maker is released from liability (c)

**Who can sue:**—There is some conflict of opinions as to whether the present section prohibits any person other than the holder of a promissory note to bring an action on the note if the former be the real owner and the latter be his benamdar (d) According to one view section 78 of the Act should be strictly construed and a valid discharge can be given only by the payee

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- (v) *Vishnu v Achut*, (1928) Nag 54; 105 IC 780, *Subba v Ramsami*, 30 Mad 88 (FB), 16 MLJ 1 MLT 377, *Ramzan v Vellasami*, 8 IC 967, 5 LBR 198, *Potoju Sangayya v Potoju Sarvasi*, 23 IC 545
- (w) *Harkashore v Guru Mia*, 1931 Cal 387, 35 CWN 53, 58 Cal. 752, 53 CLJ 37, 131 IC 570
- (x) *Ramaraja v Sadagopa*, 28 Mad 205, 15 MLJ 249, *Subbaraya v Vaithiratha*, 5 IC 931, 33 Mad 115, *Dora v Sewak*, 13 ALJ 695, 29 IC 988
- (y) *Jacaud v French*, (1810) 12 East 317
- (z) *Barber Maran v Ramana*, 20 Mad 461, 7 MLJ 269, *Annupur-anamma v Akkayya*, 36 Mad 544 24 MLJ 333, 19 IC 12 (FB); *Ramasami v Chandra*, 47 MLJ 840
- (a) *Violet Das v Banarasi*, 1864 WR 262
- (b) *Mukhanlal v Gulam Hossain*, 1933 Lah 536
- (c) *Subba v Ramsami*, 30 Mad 88, 16 MLJ 508, 1 MLT 3, 7; *Amir v Krishna*, 1936 Cal 315
- (d) See also notes under Sec 8 ante

of a promissory note or the holder thereof there being no such thing for this purpose as a benami promissory note taken in the name of one person for the benefit of another (e) Therefore, a person who is the true owner is not competent to prosecute a suit on the note if he is not the holder thereof and the fact that the holder of the note has been made a party and has admitted that he is the plaintiff's benamdar makes no difference The property in the note including the right to receive and recover the amount due thereon is vested in the holder and cannot be transferred to the plaintiff except by the process prescribed by law (f) This view is in accord with English law (g) which has been followed in the absence of any definite provision on this head in the Act There is another view that the section does not prohibit a true owner who is not a holder from bringing a suit on the note making the ostensible holder a party (h) The view held by the Patna High Court stands superseded by the full bench decision noted earlier There is again another view which strikes a middle course Thus, in a suit brought by the beneficial owner against the maker and the holder the court passed a decree against the maker with a proviso that payment should be made to the plaintiff on his securing a valid discharge of the maker by the holder as this section does not, in terms, prohibit a suit by any one except the holder (i) It is submitted that in view of the object of this Act the principle of countenancing secret title to the property in the instrument leading to uncertainty and thus discouraging negotiation would appear to be repugnant to it Therefore, the view that a suit is not maintainable by any one except the holder seems to be more in accord with the object and spirit of the Act The Act does not expressly exclude the doctrine of representative action Thus, if a holder is dead a person claiming representation to his estate can bring

(e) *Muddali v Kalam*, 1940 Mad 90, 50 LW 917; 189 IC 685

(f) *Harkishore v Guru Mia*, 58 Cal 752, 53 CLJ 37, 35 CWN 53, 1931 Cal 387; 131 IC 570, *Sree Kristo v Sitanath*, 1937 Cal 753; 41 CWN 1283 66 CLJ 54, 174 IC 340, See also *Surath v Narain*, 38 CWN 465, *Ramanuja v Sadagopa*, 28 Mad 205, 15 MLJ 249, *Subha v Ramaswami*, 30 Mad 88, *Koralu Samu v Man Muhuri*, 1934 Mad 391, 149 IC 1210, *Kesto Lal v Manna Kunwar*, 44 All 290, 1922 All 270, 20 ALJ 126, *Sundar Lal v Moula Bux*, 1935 Oudh 278, 154 IC 317, *Ghanasyam v Raghu*, 1937 Pat 100, 167 IC 57, 16 Pat 74 (FB), *Mantra Vadi v Appana*, 1943 Mad 279, 210 IC 108

(g) (1829) 10 B & C, 122

(h) *Brojola v Budhnath*, 55 Cal 551, 1928 Cal 148, 105 IC 149; *Surjug v Deosaran*, 1930 Pat 313, 11 PLT 616, 123 IC 18; *Ramnagima v Biswanath*, 1934 Pat 85, 147 IC 726

(i) *Sewram v Hotilal*, 53 All 6, 1931 All 108, 1930 ALJ 150, 130 IC 698, *Balanna v Khudoi*, 1941 Nag 207, 197 IC 426, *Rishab v Singhai*, 1 LR 1948 Nag 299 1948 NLJ 376, 1949 Nag 21

a suit to recover the debt upon a promote (*j*) or when a person is appointed a common manager of an estate he can file a suit on a promissory note on behalf of the estate (*k*)

**Payment by whom:**—Although for effectual discharge payment must be made to the holder there is no hard and fast rule under the Indian law as to who should make the payment. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor (*l*) Therefore, a payment made by a third party satisfies a debt (*m*) But such payment by a third party must be on behalf of the person liable to pay *i.e.* the maker or the acceptor Thus, when a father sent on behalf of his son who was the debtor a cheque to the creditor for an amount less than what was due in full settlement of the claim and the creditor had the cheque cashed, the debt was held to have been satisfied (*n*) When, however, a stranger makes payment, not on behalf of the debtor, he is generally deemed to be a purchaser of the instrument (*o*) and the debt does not stand satisfied, and consequently there is no discharge, all the prior parties remaining liable (*p*) It is essential, therefore, for the discharge of the debt, that the payment by the third party should be made on the authority or assent of the debtor, and for, or on account of the debtor (*q*) If there is no previous assent or authority for payment it may be ratified subsequently by the debtor (*r*) When a person became a surety on a hundi without the consent of the drawer and paid the amount on the refusal of the drawer to pay the same, the payer was held to be a holder for value and not a surety entitled to be indemnified by the drawer and, therefore, he had no other rights than those of a holder (*s*) In a bill not drawn for the accommodation of the drawer or the indorser, the acceptor remains liable to the drawer or the indorser for the payment made by either of them of the money due on a bill and there is no discharge of the debt, but it is discharged when the party for whose accommodation the bill is drawn pays the amount (*t*) When

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- (*j*) *Zujya v Mon Mohan*, 1940 Bom 164; 188 IC 618
  - (*k*) *Barrag, Charan v Sarat*, 1941 Pat 403, 192 IC 560
  - (*l*) Indian Contract Act, Sec 41
  - (*m*) *Mubarak v Aditya*, 17 IC 288
  - (*n*) *Hrachand v Temple*, (1911) 2 KB 330
  - (*o*) *Jones v Broadhurst*, (1850) 9 CB 173; *Simpson v. Egginton*, (1885) 10 Ex 845
  - (*p*) *Agra & Masterman's Bank v Leighton*, 1866 LR 2 Ex 56
  - (*q*) *Belshaw v Bush*, (1851) 11 CB 191; *Re Rowe*, (1904) 2 KB 483
  - (*r*) *Simpson v Egginton*, (1855) 10 Ex 845
  - (*s*) *Muthu v Chinnna*, 30 MLJ 369, 30 Mad 965, 1916 MWN 290; 19 MLT 278, 3 LW 393; 33 IC 508
  - (*t*) *Jemeson v Scott*, 36 Cal 291, 1 IC 972

payment is made by the drawer or the indorser of a bill not drawn for accommodation of either and there is no discharge as stated above, the bill does not cease to be negotiable. When the drawer or the indorser pays the holder, the acceptor remains liable to the drawer or the endorser and the bill is not discharged (*u*). But can the holder, who has been paid off, in such circumstances, make the acceptor still liable in an action against him? The better opinion is that he can, but only as trustee for the drawer or the indorser who has made the payment to him (*v*). A payment by the indorser does not affect the position of the prior parties but discharges the subsequent parties.

**Medium of payment:**—Ordinarily the holder who is to recover the amount due on the instrument is entitled to ask for payment in cash or other currency which is recognised as a legal tender (*w*). A cheque is not a legal tender (*x*). But this does not prevent the holder from entering satisfaction of the debt by acceptance of any form whether that is recognised as a legal tender or not, so that if the holder chooses he can give discharge of the debt by means other than cash or any other legal tender, as for instance, by setting off one debt against another (*y*), by taking a fresh bill in lieu of the old one (*z*), or by accepting satisfaction in some other way. Thus, when before his death the holder of a promote sent for the makers, discharged their liability under the note and directed them to apply the sum in their hands for the benefit of his children the note was held to have been discharged (*a*). Where a note or a bill is given in payment of a debt it is a question of fact whether the parties intended the same as an absolute or conditional payment, and the presumption as to the effect of giving and taking a note or a bill is that the debt is conditionally paid. The fact that a comparatively high rate of discount, as 2½ per cent was allowed to the plaintiff taken along with the other circumstances was held to prove that the plaintiff had accepted the hundi as absolute payment and was not entitled to sue upon the original debt (*b*).

**Part payment:**—Although insufficient tender does not

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- (*u*) Ibid
  - (*v*) *Jones v Broadhurst*, (1850) 9 CB 173
  - (*w*) *Krikorian v Ottaman Bank*, 48 TLR 247
  - (*x*) *Narandas v Abinash*, 44 MLJ 728, 27 CWN 299, 37 CLJ 45, 69 IC 273, 21 ALJ 201 (PC)
  - (*y*) *Cripps v Davies*, (1843) 12 M & W 159
  - (*z*) *Peranan v Kudupudy*, 51 IC 577, 10 LBR 4, *Jamma v Vasanta*, 39 Mad 409, 31 MLJ 18, 20 CWN 840, 24 CLJ 74, 18 Bom LR 433, 14 ALJ 534, 43 IA 99, 34 IC 213
  - (*a*) *Abdul v Ebrahim*, 33 CLJ 132, 6 IC 210
  - (*b*) *Jambu Palanappa*, 26 Mad. 526, 13 MLJ 252

discharge a debt (c), part payment may, if agreed to by the holder. In case a valid tender is refused by the holder interest will cease to run from the time of such refusal (d).

**Payment when complete:**—Payment is complete when the money is placed on the counter for payment to a person (e), he cannot recover even if the banker has no money of the drawer (f), or if it is paid in ignorance of a countermand order (g). There is an equitable right of restitution (h). Money paid to a wrong person, as where a bill is paid on presentation by a different person of the same name to whom it is really payable, will not discharge the acceptor of the bill who remains liable to the true owner though he may recover from the person wrongly paid (i). The acceptor may refuse to make such payment but in so doing he will act on his own responsibility as possession of the bill *prima facie* shews the presentor's right to the money (j). When money is paid through a mistake it may be recovered if the mistake is discovered and money is claimed before the person to whom payment has been made loses his remedy against others (k). Money once paid cannot be recovered when both the giving and taking are bona fide and the position of the holder has altered (l). No money which is voluntarily paid or paid under a mistake of law is recoverable (m), but when the mistake is one of fact (n) between the same parties in the same transaction, money is recoverable (o).

**79.** When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified,

Interest when rate specified.

- (c) *Haji Abdul v Haji Moor*, 16 Bom 141, *Lah Bacha v Arcot Naram Swami*, 34 Mad 320, 12 IC 502, *Jagat Tarmi v Naba Gopal*, 34 Cal 305, 5 CLJ 270
- (d) Indian Contract Act, Sec 38
- (e) *Chambers v Miller*, (1832) 13 CBNS 125
- (f) *London Chartered Bank v Mc Millan*, (1892) AC 292
- (g) *Punjab Industrial Agency v Mercantile Bank*, 1930 Lah 852, 31 Punj LR 369, 11 Lah 667, 127 IC 223
- (h) *Ibid*, *KMP R Firm v Official Assignee*, 1923 Mad 17, 43 MLJ 142, 70 IC 751
- (i) *Thorappa v Umedmalji*, 25 Bom LR 604, 1924 Bom 205, 87 IC 226, *Shanmuga v Govindasami*, 30 Mad 459
- (j) *Bulkely v Butler*, (1824) 2 B & C 439
- (k) *Bhuputram v Harprio*, 5 CWN 313
- (l) *Raghunath v Imperial Bank of India*, 50 Bom 49; 27 Bom LR 1229
- (m) *Raja of Ramnad v Secretary of State*, 52 Mad 12, 1929 Mad. 179; 114 IC 829
- (n) *Sinclair v Brougham*, (1914) AC 398
- (o) *Jones v Warring*, 1926 AC 670



on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs

### NOTES

This section deals with the rate of interest stipulated in the note and the period for which such interest is to be calculated. The section is applicable to instruments payable on demand or to instruments the interest of which is payable from date and not to instruments payable on a due date *i.e.* a certain period after date or sight. The rule regarding the rate of the interest embodied in this section is, however, subject to the provisions of sections 16 (3), 19 A and 74 of the Indian Contract Act (*p*) and the provisions of the Usurious Loans Act (*q*) and also to the provisions of the Bengal Money Lender's Act 1940 and other Provincial Acts regulating money lending and made applicable to negotiable instruments (*q*<sup>1</sup>)

**Rate and period of interest:**—Under the terms of the section the court has no option to disallow any interest specified in the instrument itself, no matter how exorbitant that is (*r*). The interest specified in the note on demand should be calculated from the date of the instrument and not from the date of demand, until tender or date of realisation by suit (*r*<sup>1</sup>). If the instrument bears no date, oral evidence may be given to prove the date of issue of the instrument (*r*<sup>2</sup>). A stipulation to pay compound interest must be clear and unequivocal, so, an agreement to calculate the interest at the year end is not sufficient to constitute a contract to pay compound interest (*s*). But the plaintiff is entitled to recover compound interest if he was credited with it in the defendant's book (*t*). When a suit is instituted upon the

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(*p*) *Tipperah Loan Office v Gour*, 2 CLR 349

(*q*) Act X of 1913, *Sheobans Rai v Madhulal*, 1931 All 662, 1931 ALJ 645

(*q*<sup>1</sup>) *Bank of Commerce v Kunja*, 1944 Cal 196 48 CWN 403 213 IC 171 (SB), *Deonandan v Ramprasad* 1944 Pat 303 23 Pat 618 (FB)

(*r*) *Govindjee v Ko Yee*, 11 IC 891, 4 Bur LT 201, *Mackintosh v Wingrove*, 4 Cal 187; *C P Mathur v Raja Narindra*, 19 All 39 1 CWN 52, 23 IA 138 (PC)

(*r*<sup>2</sup>) *Jamma v Alla Bux*, 32 PLT 716, *Narayan v Srinivasan*, 1930 MWN 1240

(*r*<sup>3</sup>) *Framroz v Mahomed*, 50 Bom 266, 28 Bom. LR 141, 1926 Bom 241, 94 IC 21

(*s*) *Rajindra v Byas Govind*, 2 MIA 253

(*t*) *Bharat National Bank v Banarasidas*, 5 Lah 129, 1924 Lah 531

note the interest at the rate specified in the bond will run not only up to the date of the institution of the suit but up to a date to be fixed by the court (*u*), generally, up to the date of the decree unless it is inequitable to allow such interest (*v*) The court will allow interest at the rate of 6 per cent per annum for period subsequent to the decree (*w*) The rate of interest that is to run from the date of the institution is discretionary with the court in spite of the contract to pay the stipulated interest until realisation (*x*) In the case of hundis which carry no interest, future interest should not be allowed (*y*), and in the case of pronotes not admissible in evidence only reasonable rate of interest will be allowed and not the contract rate which cannot be proved (*z*) Where there is no mention of any interest in the note, interest cannot be recovered if it was not intended to be paid or if the usage of the trade did not imply it (*a*) Where the instrument does not shew whether a certain rate of interest is payable monthly or yearly oral evidence may be adduced to prove the real intention of the parties (*b*) Where the defendant's books shew that plaintiff was paid compound interest he can recover the same (*c*) As has already been stated the section has to be read subject to the provisions of the Contract Act and the Usurious Loans Act and the Bengal Money Lender's Act, and similar other Provincial Acts, that is to say, the Court can grant relief in spite of the imperative words of this section when the rate of interest is exorbitant and unconscionable under section 16 (3), or penal in its nature under section 74 of the Contract Act or when under the provisions of the Usurious Loans Act the rate of interest is excessive and the transaction between the parties substantially unfair (*d*) or when it offends against the provisions of Provincial Money Lender's Acts (*d*<sup>1</sup>) But such relief can be granted as between the immediate parties to the transaction unless the high rate of interest or the unusual character of the provisions in the note does not, by itself, put on the transferee the duty to enquire,

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- (*u*) *Ghazaffar v Mahabir*, 17 IC 109 (Oudh)  
 (*v*) Sec 34 Civil Pro Code, *Mahtab Rai v Iqbal Nath*, 1930 Lah 733; 125 IC 629, 123 IC 7, *Nallaperumal v Vallappa*, 1930 Mad 721, 53 Mad 475, *Damadar v Lachmi*, 1930 Lah 985, 129 IC 281.  
 (*w*) Sec 34, CP Code, *Patiala Darbar v Narandas*, 144 IC 601  
 (*x*) *Umesh v Zahur Fatema*, 18 Cal 164 (PC) 17 IA 201  
 (*y*) *Sedhalal v Muralidhar*, 145 IC 725  
 (*z*) *Ismali v Purbhubai*, 6 Rang 415, 1928 Rang 242, 112 IC 254.  
 (*a*) *Venkata v Deshikariar*, 1925 Mad 1279, 22 LW 490  
 (*b*) *Monmotha v Nabin*, 14 CWN 1100, 14 CLJ 97, 7 IC 214  
 (*c*) *Bharat National Bank v Banarasi*, 5 Lah 129, 1924 Lah 531  
 (*d*) *Sheobans v Madholal*, 1931 All 662, 1931 ALJ 645  
 (*d*<sup>1</sup>) *Bank of Commerce v Kunja*, 1944 Cal 196 48 CWN 403 213 IC 171; (SB); *Deonandan v Ramprosad*, 1944 Pat 303 23 Pat. 618 (FB)

in such cases the relief need not be confined between the immediate parties only but can be given against the transferee also. The practice of deducting interest in advance at the time of tendering the money payable in instalments on default of which the balance of the principal amount becomes due is not illegal though hard and oppressive (e)

**Cessation of interest:**—When a valid tender is made and refused, interest will cease to run from the date of such refusal (f). The tender to be valid must be of the whole amount due and must be made in cash or in recognised currency without any condition whatever.

**Damdapat:**—The Hindu rule of Damdupat forbids a person to recover by way of interest an amount exceeding the principal amount lent i.e. the creditor cannot recover from the debtor more than double the amount originally advanced as loan (g). But this rule of Hindu law does not apply in the Mofussil (h) nor to parties who are not Hindus (i), nor after a decree (j). It is, however, submitted that the principle of this rule has been adopted in the Bengal Money Lender's Act which provides that no court shall pass a decree for an amount more than double the amount lent (k).

**80.** When no rate of interest is specified in the instrument, interest on the amount due thereon shall, “notwithstanding any agreement relating to interest between any parties to the instrument”, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged until tender or realization

(e) *Tipperah Loan Office v Gour*, 2 CLR 349

(f) Indian Contract Act, Sec 38

(g) In the matter of *Hari Lal Mullick*, 33 Cal 1269, *Sundara Bai v Jayawant*, 24 Bom 114, *Debi Prosad v Kusum*, 10 Pat 63, 1930 Pat 442, 128 IC 133, *Sharifuddin v Abdul*, 1933 Nag 293, 144 IC 135, *Official Assignee v Abdul*, 1928 Sind 95, 107 IC 209

(h) *Dindayal v Kailash*, 1 Cal 92, *Nobin v Romesh*, 14 Cal 781, *Subramania v Subramania*, 31 Mad 250, 8 MLT 278, 18 MLJ 245

(i) *Narain v Hafiz*, 1825 Nag 21, 172 IC 264, *Harilal v Nagar*, 21 Bom 38

(j) *Narayan v Nathumal*, 1922 Nag 155, 65 IC 275

(k) Bengal Money Lender's, Act VII of 1933 Secs 4, 5, 6 and Sec 30 of B M Act 1940

of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs

*Explanation*—When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour

## NOTES

The portion within the inverted comas has been substituted by Act 30 of 1926 for the words "except in cases provided for by the Code of Civil Procedure Sec 532" (*l*) This section which is an enabling one (*m*) makes provisions for cases where there is no rate of interest specified in the instrument The section applies only to promissory notes and bills of exchange and to no other instrument (*n*) Although the section speaks of non-specification of the rate of interest it governs cases where there is no mention of any interest whatever (*o*)

**Rate of interest:**—Under the ordinary law existence of a separate contemporaneous oral agreement to pay interest is admissible in evidence when the document which is not governed by this Act is silent about interest or a person can claim interest under the provisions of the Interest Act of 1839 Previous to the amendment of the section in 1926, a collateral oral agreement was admissible to prove a higher rate of interest than six per cent (*p*) But after the insertion of the words "notwithstanding any agreement relating to interest between any parties to the instrument" in the section, a party, under the Negotiable Instruments Act, can neither set up nor prove such a contemporaneous oral agreement about interest (*q*) nor claim interest under the Interest Act 11 of 1839 (*r*) but can claim interest only at the rate of six per cent per annum as silence on this point is equivalent to an

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(*l*) Civil Procedure Code, Or 37 Rule 2

(*m*) *Ghashiram v Ram Narain*, 11 CWN 105 (PC) 5 CLJ 7, 29 All 33, 9 Bom LR 1, 17 MLJ 15

(*n*) *Narain v Kirpa*, 1932 Lah 616

(*o*) *Premal v Radhaballav*, 58 Cal 290, 34 CWN 779, 1931 Cal 140, 130 IC 134, *Ghashiam v Ramnarain*, 11 CWN 105 (PC) 5 CLJ 7, 29 All 33

(*p*) *Ghashiram v Ram Narain*, 11 CWN 105, 5 CLJ 7, 29 All 33; 17 MLJ 25, 9 Bom LI 1 (PC)

(*q*) *Fathema v Hanumantha*, 17 MLJ 296, *Yado v Behari*, 53 IC 242

(*r*) *Lacharam v Hemraj*, 1932 Lah 30, 134 IC 121

agreement to pay interest at six per cent per annum (*s*) Therefore, when there is no mention of any interest in the document itself the court can grant interest only at the rate of six per cent per annum as provided by this section (*t*) and an award of a higher rate is illegal (*u*) The decision awarding a higher rate on the admission of the defendant in a Calcutta case (*v*) is no longer good law When in spite of agreement to pay interest in the document the rate of such interest is not mentioned, six per cent per annum will be allowed (*w*) Since this Act does not abrogate local usages relating to negotiable instruments in an oriental language (*x*) interest at a rate exceeding six per cent was allowed in a suit on a hundi according to local usage notwithstanding the provisions of the section (*y*)

**Effect of the amendment:**—Prior to the amendment of 1926 by the insertion of the words “notwithstanding any agreement relating to interest between any parties to the instrument” in place of “except in cases provided for by the Code of Civil Procedure Sec 532” (*ie* Order 37 Rule 2), a person who instituted a suit under the summary procedure laid down in that Code could not claim any interest nor was competent to set up a case of any agreement to pay interest when it was not provided for in the instrument itself (*z*) But the deletion of the latter clause enables the court to award interest at six per cent per annum even in suits under the summary procedure and the insertion of the former clause has done away with the effect of any contemporaneous oral agreement regarding the rate of interest Therefore, in spite of any contemporaneous oral agreement for payment of interest at a higher rate, courts are not competent to allow interest at more than six per cent per annum when the note is silent as to interest (*a*) The earlier decisions allowing

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- (*s*) *Samarendra v Mahadev*, 63 IC 296, *Banwari v Jagannath*, 1 Pat. LJ 71, 35 IC 431, *Bishun Chand v Baba Audh*, 2 Pat LJ 451, 40 IC 350, 1 Pat LW 615, *Ganapat v Sopana*, 52 Bom 88 (FB), 1928 Bom 35, 30 Bom LR 1, 107 IC 257 (FB), *Thankar v Ishar*, 10 IC 847; 113 PLR 1911, *Ram Gopal v Sitaram*, 20 IC 319, 268 PLR 1913, 226 PWR 1913, *Laxmi v Sitaram*, 51 IC 106
- (*t*) *Ibid*, *Kurshid v Ram Ditta*, 1928 Lah 665, 107 IC 753, *Premlal v Radhaballav*, 58 Cal 290, 34 CWN 779, 1931 Cal 140
- (*u*) *Lacharam v Hemraj*, 1932 Lah 30, 134 IC 121, *Kanharya v Azimu Lal*, 25 OC 69, 1922 Oudh 122
- (*v*) *Luchmi v Hemendra*, 18 CWN 1260, 26 IC 736
- (*w*) 15 WR 1056, *Best v Haji Mahamad*, 23 Mad 18, *Samarendra v Mahadeo*, 63 IC 296
- (*x*) Sec 1 ante
- (*y*) *Har Naram v Behari*, 1932 Lah 582, 24 PR 1915
- (*z*) *Bhupati v Sourendra*, 30 Cal 446, 7 CWN 412
- (*a*) *Kader v Seraj*, 49 Cal 716, *Lacha-Ram v Hemraj*, 1932 Lah. 30, 134 IC 121

a higher rate of interest on the admission of a contemporaneous oral agreement or a written agreement, or on a subsequent oral agreement in consideration of the creditor not pressing for payment are no longer good law

**Period of interest:**—Interest is payable from the date on which the money becomes due *ie* from the date of maturity of the instrument (*a*<sup>1</sup>) But the unhappy wording of the section has given rise to conflict of decisions regarding the time from which interest under this section is to be allowed on notes payable on demand Following a literal and grammatical construction of the wording of the section it has been held that the phrase, the date at which the same ought to have been paid, has no reference to the amount due on the note but relates to the interest due thereon (*b*) Interest on those instruments to which section 80 applies is payable from the date of execution or from maturity or from presentation or from demand or from service of summons according to the circumstances of each case and in consequence the date was of necessity left indefinite in this section, and, therefore, where there was no demand, interest at six per cent should be calculated from the service of summons, and if there was demand interest should be allowed from the date of demand (*c*) This view is based on a literal interpretation of the wording of the section It has, however, been held in a number of cases all of which have been noticed in the Calcutta Case referred to above that where an on-demand promissory note is silent on the question of interest, interest shall be allowed at the rate of six per cent per annum from the date of the note, demand being unnecessary (*d*)

**Explanation:**—According to the explanation the indorser of a bill or note is liable to pay interest from the time he receives notice of dishonour The section speaks of the indorser but not of the drawer whose position is similar In English law the present rule applies to the drawer as well (*e*) Where notice of dishonour is not necessary, or in case of dishonour by non-acceptance, interest is to be calculated from the date of dishonour (*f*)

(*a*<sup>1</sup>) *Canara I & B Syndicate v Narayan*, 1942 Bom 15 198 IC 288

(*b*) *Premal v Radha Ballav*, 58 Cal 290, 34 CWN 779, 1931 Cal 140, 130 IC 134, *Best v Haji Mahamad*, 23 Mad 18

(*c*) *Ibid*

(*d*) *Ganpat v Sopana*, 52 Bom 88 1928 Bom 35, 30 Bom LR 1, 107 IC 257 (FB), *Bishen v Andh*, 2 Pat LJ 451, 40 IC 350; 1 Pat LW 615, *Framroz v Mahamed*, 50 Bom. 266, 28 Bom LR 141, 1926 Bom 241, 94 IC 21, *Manghulal v Bhan Pratap*, 1936 PWN 876, *Dakha Devi v Pratap*, 165 IC 243

(*e*) *Walker v Barnes*, (1813) 5 Taunt, 239

(*f*) *Harrison v Dickson*, (1811) 3 Camp 52 (n)

**English law:**—The English law is quite different from the rule laid down in this section regarding the rate of interest. According to the Bills of Exchange Act the courts have absolute discretion to grant interest as damages or to withhold it wholly or in part and the court may even refuse to award interest at a rate specified in the document (*g*)

**81.** Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him

Delivery of instrument on payment, or indemnity in case of loss

## NOTES

The section is primarily meant for the protection of the debtor making payment against double liability. The debtor has a right to have the instrument delivered to him on payment, for, if the debtor does not take back the instrument from the holder, he may be liable to pay the amount again to a holder in due course who takes the instrument without knowledge of the payment (*h*). Possession of the instrument is *prima facie* evidence of the possessor being the holder (*i*). Therefore, if the holder refuses to deliver the instrument to the debtor at the time of payment, the debtor may refuse payment. It is the duty of the holder, when he asks for payment, to exhibit the instrument to the person from whom payment is demanded, and on receiving payment, to deliver it up to the party making the payment (*j*). The holder may be compelled to deliver the note if, after payment, he refuses to do so (*k*). The acceptor paying the bill has a right to the possession of the instrument for his voucher and discharge *protanto* in his account with the drawer (*l*).

**Loss of instrument:**—A suit is maintainable on a lost instrument upon proof of loss and giving indemnity. The onus

(*g*) B of E Act, Sec 57 (3)

(*h*) *Muthu v Velu*, 35 IC 591, 2 MWN 107, (1916) 4 LW 34, *Vithaldas v Indravelu*, 29 IC 936, 8 Bur LT 161, 8 LBR 202

(*i*) *Muthar v Kadir*, 28 Mad 544, 15 MLJ 384

(*j*) *Aga Ahmed v Judith*, 19 Cal 242 (PC) 19 IA 24

(*k*) *Ramuz v Crowe*, (1847) 1 Ex 167

(*l*) *Hansard v Robinson*, (1827) 7 B & C 90

of proof of loss lies on the plaintiff (*m*) and mere admission of execution by the defendant does not amount to an admission that it was lost by the plaintiff (*n*). When the holder who is entitled to payment cannot produce the note either because it has been lost or because it has been destroyed the person paying has a right to be indemnified against any possible claim against him in future. It will be quite unsafe for the payer to make the payment without indemnity, for, a person may bona fide come into the possession of the instrument subsequently and become a holder in due course with a right to enforce payment against all prior parties including the person who has already made payment (*o*). It is to provide against such eventuality that the provision for indemnity has been made. The section, however, does not lay down that an indemnity bond has got to be executed by the holder. The section entitles the payer to be indemnified against loss in future even if no bond has been executed. Where the maker of a promissory note paid money to an agent to retire it and the creditor having mislaid the note could not deliver it up, and the money not being paid, the agent became bankrupt, it was held that the maker was still liable to pay the amount of the note, but no interest was recoverable from the date of the tender (*p*). Where the indorser pays the holder he must take back the instrument so that he may recover the amount from the maker. If on payment a prior endorser gets possession of the instrument from his immediate endorsee without reindorsement he may recover thereon (*q*). When the person liable pays the amount due to the holder he is entitled to have delivered up to him the instrument as well as the security, if any, given by the maker (*r*). When half of a note has been lost and the other half is with the holder he is entitled to maintain a suit on the half note in his possession and a bank may make payment on production of a half note without any indemnity as the person who has taken the lost half note has taken it with notice and at his peril and cannot be a holder in due course (*s*).

A tender of payment accompanied by a condition which

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- (*m*) C P Code Or 37 rule 16, *Rohamatulla v Kamaraja*, 1930 M W N 417  
 (*n*) *Sundara v Gopala* 1934 Mad 100, 9 L W 34  
 (*o*) *Muthu v Velu*, 35 I C 591, (1916) 2 M W N 107, 4 L W 34; *Vithaldas v Indravelu*, 29 I C 936, 8 Bur LT 161, 8 L B R 202  
 (*p*) *Dent v Duan*, (1812) 3 Camp 296  
 (*q*) *Muthar v Kadir*, 28 Mad 544, 15 M L J 384  
 (*r*) *Aga Ahmed v Judith*, 19 Cal 242 19 I A 24, (P C)  
 (*s*) *Venkotaramiah v Official Assignee*, 33 Mad 196



prevented it from being a perfect and complete tender does not stop the interest from running (t)

## CHAPTER VII

### OF DISCHARGE FROM LIABILITIES ON NOTES, BILLS AND CHEQUES

**82.** The maker, acceptor or indorser respectively  
Discharge from liability— of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such  
by cancellation acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder,

(b) to a holder thereof who otherwise dis-  
by release charges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge,

(c) to all parties thereto, if the instrument is  
by payment payable to bearer or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon

### NOTES

This chapter deals with the discharge of *parties* from liability on notes, bills and cheques as distinct from the discharge of the *instruments* themselves. The discharge of the instrument itself extinguishes all rights of action under it and puts an end to its negotiability. So that, if, after such discharge, the instrument reaches a holder in due course he acquires no right under it. But the discharge of a particular party or parties does not discharge the instrument itself

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(t) *Narain v Abinash*, 27 CWN 299, 37 CLJ 45, 44 MLJ 728, 731, 21 ALJ 201; 69 IC 273, 1922 PC 347, (PC)

nor does it affect its negotiability. It only releases the party or parties from liability to one party or another and the liability of the parties, not discharged, continues as before. This section lays down three modes of discharge of parties and does not touch any discharge under the general law or under any contract. The section applies to the drawer as well.

**Clause (a)—By Cancellation:**—A party whose name is cancelled with the intention of discharging him is discharged from liability to the holder who has cancelled his name and to all other persons who have derived their title from such holder (*u*). To operate as a discharge such cancellation must be intentional and not through mistake or without the authority of the holder (*v*). When the cancellation of a party's name appears on the face of the bill the onus of proof that such cancellation has been done through mistake or without authority lies on the party who seeks to charge him with liability (*w*). Therefore, where such a mistake occurs it is always safe to note it immediately on the instrument (*x*). A bill is not cancelled merely because the time of payment is extended by consent of parties as extension of the time is not one of the modes of discharging the liability of the acceptor under this section (*y*). If there is no material alteration on the face of the bill it is not cancelled, as, where a due date was noted in a corner of the bill and it was struck off after extension of time (*z*).

Not only should effective cancellation be intentional but it should distinctly appear on the instrument. The best way of cancelling a name is to score it through making it perfectly illegible.

The position of the maker of a note being similar to that of the acceptor of a bill, the present rule would apply to the maker as well although the term, maker, does not occur in this clause.

It is not only the person whose name is cancelled that is discharged but all parties subsequent to him are also discharged. Every prior party is liable to the subsequent

(*u*) *Ralla v Dennistown*, (1851) 6 Ex 483, *Yglesias v River Plate Bank*, (1877) 3 CPD 60, 65, 26 WR 843.

(*v*) *Prince v Oriental Bank Corporation*, (1878) 3 AC 325, 26 WR 543, *Bank of Scotland v Dominion Bank*, (1891) AC 592.

(*w*) B of E Act, Sec 63 (*iii*).

(*x*) *Warwick v Rogers*, (1843) 5 M & Gr 340.

(*y*) *Cox v Pestonji*, 50 Bom. 656, 1927 Bom 13, 28 Bom LR 1264, 99 IC 489 affirmed on appeal in 52 Bom 589, 49 CLJ 32 1928 PC 231, 113 IC 124.

(*z*) *Ibid*.

parties so that by the discharge of a prior party the right of the subsequent parties against him is barred. Hence the discharge of a prior party means as well the discharge of all parties subsequent to him. It, therefore, follows that cancellation of the name of the maker of a note and of the acceptor of a bill who are the principal debtors—other parties being sureties—means the discharge of all parties to the note or the bill. It is virtually the discharge of the instrument itself. This principle does not apply to accommodation bills or notes as cancellation of the name of the acceptor or the maker will not discharge the drawer or payee for whose accommodation the bill or the note was made because the latter have no right of recourse against the former. The holder can, however, cancel the name of a party expressly reserving his right against a subsequent party (a). Cancellation does not necessarily affect the rights of the holder arising with reference to a collateral security (b).

**Clause (b)—By Release:**—The clause is wide enough to cover cases of discharge, not only by release, but by agreement of parties as well. Every promisee may dispense with or remit, wholly or in part, the performance, of the promise made to him or may extend the time for such performance, or may accept, instead of it, any satisfaction which he thinks fit (c). The holder of a negotiable instrument who is the promisee can, therefore, waive or renounce his claim wholly or in part, as he chooses, against the person or persons under it. A party to the instrument may be expressly released from liability by the holder or the holder may accept a smaller amount in satisfaction of the entire claim (d), or may accept a promise to do some thing in future for full or partial discharge (d<sup>1</sup>), but in order to discharge the party he must do so absolutely and without any condition. The matter wholly rests with the holder. The transaction is unilateral.

Waiver may be evidenced by conduct inconsistent with the continuance of the rights waived. There is nothing in law to prevent a discharge by acceptance of something in lieu of the performance of the contract (e). A promisee may remit the whole or part of the amount due even though the remission is in pursuance of an oral agreement which is inadmissible

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(a) Section 39 *ante*

(b) *Yglesias v River Plate Bank*, (1877) 3 CPD 60, 26 WR 843

(c) Indian Contract Act, Section 63

(d) Byles, 236 (19th Ed.), *In re Dickinson*, (1909) 101 LT 27

(d<sup>1</sup>) *Ellappa v Sessa*, 1938 Mad 897 178 IC 355

(e) *Kawadaj v Gangaram*, 64 IC 461

under sec 92 (4) of the Evidence Act (f) When a creditor makes a remission and communicates it to the debtor, that is enough and no suit will lie to recover the amount remitted (g) No consideration is necessary for such discharge (h). Renunciation by the holder to discharge the acceptor or the maker must be unmistakably distinct and direct and not mere inferences from delay or silence on the part of the holder (i) When one of two or more joint holders gives release, it operates as a discharge against the other holders as well (j) but the release of one of the joint parties will not discharge the others (k) If the principal debtor is released at or after maturity, the instrument is discharged (l), but if such release is not given at or after maturity, it will bind the parties but will not discharge the instrument (m) A fresh agreement between the drawer and the holder for value of a bill does not release the acceptor of the first bill from liability but gives it a conditional satisfaction, so that if the new instrument is duly paid at maturity, the first instrument is discharged, and if it is not so paid the dormant right on the first instrument is revived (n) But the execution of a fresh note or the substitution of another debtor may discharge the old one if the parties clearly mean, without any condition whatever, to merge the original contract into the new (o) If, on the due date, the acceptor asks for further time, and the holder gives him further time, the bill is not cancelled, nor is the liability of the acceptor discharged (p)

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- (f) *Karampalli v Thakku*, 26 Mad 195  
 (g) *Monohar v Thakur Das*, 15 Cal 319, *Gopala v Venkata*, 9 MLT 270  
 (h) *Vedachala v Sivaperumal*, 16 MLT 184  
 (i) Daniel, Sec 545  
 (j) *Annapuramma v Akkayya*, 36 Mad 544, 24 MLJ 333, 13 MLT 268, 1913 MWN 328, 19 IC 12 (FB), *Ramasami v Kottayya*, 47 MLJ 840, 48 Mad 693, 1925 Mad 167, 85 IC 201, *Barber Maran v Ramana*, 20 Mad 461, 7 MLJ 269  
 (k) IC Act, Secs 44, 138, *Velhan v Woomidy*, 29 IC 760, *Mulchand v Alwar*, 39 Mad 548, 17 MLT 449, 29 IC 303, *Krishna v Sanat*, 44 Cal 162, 21 CWN 740, 25 CLJ 24, 34 IC 609  
 (l) *Foster v Dawber*, (1851) 6 Ex 839, 851  
 (m) *Aston v Freestun*, (1840) 2 Man & G 1  
 (n) *The Punjab National Bank v Tajoomal*, 49 All 257, 1927 All 236, 25 ALJ 102, 100 IC 341  
 (o) *Ibid*, *Anantanarayan v Savitri*, 36 Mad 151, 19 IC 848, *Periannan v Kudupooddy*, 51 IC 577, 10 LBR 4, *Rahamat Ali v Deva Singh*, 4 Lah 451, *Dargavarapu v Rampratap*, 25 Mad 580  
 (p) *Cox v Pestonji*, 50 Bom 656, 1927 Bom 13, 28 Bom LR 1264, 99 IC 489 affirmed on appeal 52 Bom 589

**Clause (c)—By payment:**—This clause refers to payment of the note according to its tenor and does not contemplate payment of part of the principal sum by one of the executants (*q*)

For discharge by payment see notes under section 78 *ante*

**Discharged by operation of law:**—The principles of general law are applicable to negotiable instruments as well and therefore, besides the modes of discharge specified in this section, there are various other modes of discharge by operation of law as, when, a debtor is adjudicated an insolvent, or the remedy of the holder is barred by the law of limitation on account of the lapse of time or when one debt merges into another. Thus, when the holder of a note brings an action against the maker and the endorser the debt under the note is merged into the judgment debt and the original debt on the note is discharged. But if the action is brought only against the maker and a judgment is obtained against him and the judgment debt remains unpaid, the indorsers are not discharged.

**83.** If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

## NOTES

The words, forty-eight hours, have been substituted for, twenty-four hours, by the Amending Act XII of 1921, section 2 to avoid inconvenience and hardship.

The section applies only to bills of exchange in which acceptance by the drawee is obligatory *i.e.* bills after sight, and does not apply to other bills nor to hundis (*r*). It does not apply to presentment for payment but applies only to presentment for acceptance (*s*). It has already been noticed that an acceptor is entitled to have forty-eight hours' notice to consider whether he will accept a bill or refuse it (*t*). And

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(*q*) *Muthur v Venkata*, 1937 Rang 522

(*r*) *Khan Chand v Golab Ram*, 39 PR 1911, 10 IC 133, 142 PLR 1911, *Nund v Gulub*, 71 IC 61

(*s*) *Tulsi v Gur Dayal*, 48 IC 423, *Ram v Lalta*, 47 IC 683, 5 O LJ 415

(*t*) Section 63 *ante*

the holder is bound to leave the instrument to the drawee for 48 hours exclusive of holidays (u) If after 48 hours he does not signify his acceptance the bill will be deemed to have been dishonoured and the holder must give the necessary notice Besides this, a further duty is cast upon the holder and he should not enlarge the period of forty-eight hours and grant the drawee more time for deliberation for acceptance If he does so, without their consent, all previous parties to the bill will be discharged from liability (v) Parties consenting to the extension of time will not be discharged (w) The drawer cannot claim discharge under this section if a bill incapable of being accepted or dishonoured is left with the drawee for more than 48 hours (x) as in such a case no notice of dishonour is necessary

**84.** (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the

When cheque not duly presented and drawer damaged thereby drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him

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(u) *Sukhlal v Eastern Bank*, 46 Cal 584

(v) *Khan Chand v Golab Ram*, 39 PR 1911, 10 IC 133, 142 PLR 1911

(w) *Ibid*, *Ram v Lalta*, 47 IC 683, 5 OLJ 415

(x) *Sukhlal v Eastern Bank*, 46 Cal 584

*Illustrations*

(a) A draws a cheque for Rs 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

## NOTES

The section is complementary to section 72 and has to be read along with it. Formerly the section ran thus: "When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder." This has been substituted by the present section by the Amending Act VI of 1897 following the wordings of section 74 of the English Bills of Exchange Act.

The section lays down an equitable doctrine that where for non-presentation of a cheque within a reasonable time the drawer suffers actual damage through such delay he is discharged to the extent of his damage (y). A cheque is issued by a person for payment of money to his creditor against a bank where the former has funds. A creditor is not bound to accept payment by a cheque which is not a legal tender. A tender to be valid must be made in the current coin of the realm. But where no objection is raised by the creditor when the cheque is given as to the medium in which the tender is made the tender cannot be held to be bad because it has been made by a cheque and not in coin or currency notes (y<sup>1</sup>). When, therefore, a creditor accepts a cheque as a medium of payment the provisions of the section will operate. In order to take payment the payee must present the cheque to the bank and that must be done within a reasonable time, that is to say, without undue delay. When on such presentment payment is refused by the bank there arises a cause of action against the person who issued the cheque *i.e.* the drawer. What is a reasonable time is a question of fact in each case (z) and is determined regard being had to the nature of the instrument, the usage of trade and of bankers and the

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(y) Halsbury Vol II p 531

(y<sup>1</sup>) *Hiralal v Khizar Hyat Khan*, 1936 Lah 168, 161 IC 251, *Dy Commissioner of Partabgarh v Puran Chand*, 1938 All 15, 172 IC 881, *Hassanally v Abdul*, 1936 Rang 164, 161 IC 791

(z) *East Indian Society v T M Nair*, 31 Mad 364, 18 MLJ 465, 4 MLT 89

circumstances of each particular case (a) Cheques are not meant for circulation but for immediate payment. When, therefore, a cheque is not recovered immediately after it is issued for encashment but is circulated for sometime before the holder presents it for payment the drawer may, if he suffers actual damage meanwhile, claim a discharge to the extent of his loss (b). While the present section enjoins early presentation of a cheque in the interest of the drawer there are other cogent reasons also for the same. Delay in presentation may put the holder in difficulty in getting payment at all for during this time the bank may fail, the drawer may withdraw his whole amount from the bank or may issue an order stopping payment, or the bank may, out of suspicion on account of delay, postpone payment for ascertainment of the real position.

**Clause (2):**—It is not quite intelligible why this subsection has been inserted. In view of section 105 *post* which lays down how a reasonable time is to be determined the present clause appears to be unnecessary.

**Clause (3):**—This clause puts the holder of the cheque, who has suffered on account of his own laches in making presentment for payment within a reasonable time, in the position of the drawer in relation to the bank. To the extent of the loss suffered by him *ie* the amount for which the drawer has got his discharge for late presentation, the holder steps into the shoes of the drawer and becomes a creditor of the bank. The holder can prove his claim for such an amount against the bank in insolvency. Where, however, the drawer had no funds in the bank at the time the cheque was issued but he was allowed to overdraw, the drawer would get his discharge if the bank failed. But the holder in such a case would not be able to prove his claim against the insolvent bank (c).

**Difference between bills or notes and cheques:**—The effect of delay in presenting bills or notes on the one hand and cheques on the other should be carefully noted. In the case of the former negligence absolutely discharges the drawer, while, in the case of the latter, under the provisions of the present section, the discharge, if at all, is qualified and conditional. It depends on whether any loss has been suffered by the drawer on account of the late presentation and, if so, what loss has been suffered, because the loss suffered will be the measure of the drawer's discharge. If in spite of delay no

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(a) See also section 105 *post*

(b) *Moule v Brown*, (1838) 4 Bing (NC) 266

(c) Chalmers (10th Ed) 296



loss has been suffered by the drawer no question of discharge arises. The discharge will be proportionate to the loss of the drawer.

**85.** (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course

Cheque payable to order

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation

### NOTES

Subsection (2) was added by section 2 of the N I Amendment Act, 1934 (XVII of 1934)

This section affords a special protection to the banker who stands in the position of a debtor and is directed to make payment on behalf of his customer who has funds with him. The banker is reasonably expected to know the signature of his customer who draws a cheque against him. As a matter of practice every banker has got a specimen signature of his customer and it is his bounden duty to compare the signature of the customer on the cheque with the specimen signature to guard against any forgery and wrong payment. While the banker can very well satisfy himself about the genuineness of the signature of his customer he is not in a position to verify the signature of the payee who may not be known to him. In such cases the banker could take a reasonable time to make enquiries as to the genuineness of the endorsements on the bills (d). But this dilatory procedure was hardly practical for a banker to adopt (e). In order to remove this difficulty and to facilitate commerce it was laid down that a draft or order drawn upon a banker payable to order might be paid by him when presented if it purported to have been endorsed by the payee (f). Closely following this rule the present section has been enacted and it protects the banker (1) where the signature

(d) *Roberts v Tucker*, (1851) 16 Q B 560

(e) *Bank of England v Vagliano*, (1891) A C 107, 39 W R 657

(f) English Stamp Act, Sec 19

of the payee is forged and (11) where the agent of the payee without his authority endorses it on behalf of the payee. This removes a serious hindrance to the dispatch so essential in banking business and a serious impediment to the negotiability of cheques drawn to order on a bank (g) But to avail himself of the protection afforded by this section the banker must make payment in due course which means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned (h) The protection given by this section is not only in relation to the endorsement by the payee but extends to other endorsements as well (i) Previously, the Bombay and the Calcutta High Courts held that the operation of this section was confined to the endorsement by the payee only and when the signature of the endorsee was forged the banker could not avail of the protection afforded by this section (j) This view which was based on the distinction between sections 7 and 16 which define a payee and an endorsee respectively and on a literal construction of this section, is no longer a good law in view of the insertion of clause 2 of section 16 by section 3 of the Amending Act 5 of 1914 which places the endorsee in the same position as the payee so far as possible

**Apparent tenor of the document:**—Payment must be made in accordance with what appears on the face of the instrument to be the intention of the parties Therefore, payment made to one not mentioned in the document *etc.*, one not entitled to receive payment, or when it is stipulated in the document that payment is to be made at or after maturity, payment before maturity, although it may discharge the obligations between the parties, will not be payment in due course and will not entitle the banker to the protection of the section

**In good faith and without negligence:**—When there are suspicious circumstances and the banker fails to make any enquiry which may bring home the defects, the payment is not in due course When a payment is made by a person with the knowledge that the note paid for is a stolen one and the person receiving the payment is not entitled to receive payment or when a person makes a payment after receipt of an order stopping

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(g) *Charles v Blackwell*, (1877) 2 CPD 151

(h) Section 10 *ante*

(i) Section 16 Cl (2) *ante Jugnban v Nagar Central Bank*, 50 Bom. 118, 93 IC 619, 1926 Bom 262, 28 Bom LR 226

(j) *Sulleman v The New Oriental Bank Corp*, 15 Bom 267, 279; *Bhuputram v Hari Priso*, 5 CWN 313

payment (*k*), or when a Shahjog hundi is paid without any enquiry about the Shah (*l*), or when payment is made to a wrong person (*m*), or when payment is made in spite of discrepancy between the name of the payee and his indorsement (*n*), or when payment is made at the counter on a cheque payable to order and crossed (*o*), or when payment is made on a stale cheque (*p*), or when payment is made of a large sum of money on an uncrossed cheque over the counter to a man whose appearance and demeanour excite suspicion (*q*), or when payment is made on a cheque with alterations or with alterations initialled but not by all the drawers (*r*), they will not be payments in good faith and without negligence. And for such payments the paying bank will not be protected.

But if, however, the customer's negligence is the direct cause of the loss or is intimately connected with the transaction the customer will be liable and not the bank (*s*), or when the banker can shew that the forgery of the drawer's name was intimately connected with the negligence of the customary payment on such forged cheque he would be protected on the principle that where one of the two innocent persons must suffer a loss, that party should suffer whose negligence was the proximate cause of the loss (*t*). Mere negligence in not keeping the cheque book and the rubber stamps in proper custody was not held sufficient to make the customer liable (*u*).

#### **Payment to the person in possession of the instrument:—**

In order to be a payment in due course it must be made to the person who is in possession of the instrument. This condition, however, admits of one exception as when a note is stolen, payment to the possessor of a stolen note will not be payment in due course if the man making the payment has actual or constructive notice of this fact. But if a cheque is sent through

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- (*k*) *Lala Mal v Kesho Dass*, 26 All 493, 1 ALJ 254, 1904 AWN 100, *Bhagawandas v Creet*, 31 Cal 249; *Md Yakub v. Imperial Bank of India*, 1941 Cal 110 194 IC 330
  - (*l*) *Ganesh v Lachmi*, 18 Bom 570
  - (*m*) *Lattaprasad v Charles Campbell*, 9 CWN 841, *Bank of Bengal v Mendes*, 5 Cal 654, 5 CLJ 586, *Lal Chand v Agra Bank*, 18 IA 111
  - (*n*) *Slingsby v District Bank*, (1932) 1 KB 544
  - (*o*) Section 129 *post*; *Smith v Union Bank*, (1875) LR 1 QBD 31
  - (*p*) Pagets Law of Banking, 185
  - (*q*) *Bank of England v Vaghano* (1891) AC 107
  - (*r*) *Kapitigalla Rubber Estate v National Bank of India*, (1909) 2 KB 1010
  - (*s*) *Punjab National Bank v Mercantile Bank of India*, 36 Bom. 455; 13 Bom LR 835
  - (*t*) *Bhagawan v Creet*, 31 Cal 249, 57 IC 226
  - (*u*) 1924 Rang 264

the post office which is the recognised means of transmission of cheques and in course of such transmission it is stolen and the thief gets payment from the bank by means of forged endorsements the bank is not liable although the cheque is sent without any request (*v*)

**Payment under circumstances not affording a reasonable ground for believing that he is not entitled to receive the payment:**—This is closely allied to payment in good faith and without negligence. For this see notes under good faith and without negligence and also under section 10 *ante*

**Honesty and without negligence:**—It will be noticed that under the English law a payment to be protected must be one made in good faith in the ordinary course of business and a thing is deemed to be done in good faith when it is in fact done honestly, whether it is done negligently or not (*w*). While, therefore, only honesty is the essence of the protected payment under the English law and “without negligence” forms no part of it, the Indian law makes both of them conditions precedent to such payment

**Position of the drawer:**—This section expressly lays down the position of the drawee of the cheque *i.e.* the position of the bank. In the terms of this section payment in due course discharges the liability of the bank. But what is the position of the drawer of a cheque who is the principal debtor? The answer to this question is not to be expressly found in the Act. It has, however, been found that the drawer as the principal debtor is only bound to pay the holder in case of dishonour by the drawee under section 30 and as payment mentioned in this section does not constitute dishonour on the part of the drawee *i.e.* the bank, the drawer is not bound to pay and is also necessarily discharged (*x*)

**85-A.** Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course

(*v*) *Jugwan v Nagar Central Bank*, 50 Bom 118, 1926 Bom 262, 93 IC 619, 28 Bom LR 226

(*w*) Bill of Ex Act, Sec 90

(*x*) *Sullemam v The New Oriental Banking Corporation Ltd*, 15 Bom. 267, 279, *Jugwan v Nagar Central Bank*, 50 Bom 118, 93 IC. 619, 1926 Bom 262, 28 Bom LR 226

## NOTES

This section has been inserted by the Amending Act XXV of 1930 to make it clear that it affords protection to bankers in India against forged or unauthorised indorsement on 'on demand' drafts, drawn by one branch of a bank upon another branch of the same bank. A doubt has been expressed in authoritative quarters as to whether the Indian law as it stands at present, extends the same protection to banks in India, as the English law does to the banks in England and consequently legislation is considered to be expedient in order that the position may be established beyond all doubt (y)

**Payment of drafts in due course:**—Ordinarily, a bank cannot stop payment of an on-demand draft unless there is some doubt about the identity of the person presenting it. The position of a bank in regard to its own drafts is not quite the same as its position in regard to cheques drawn on it, since it has taken on commitments of its own in favour of a third person at the instance of the purchaser. The purchaser is not entitled to ask the issuing bank to stop payment on grounds such as matters relating to consideration in respect of which the draft has been issued at his instance, for this would often put the bank in an impossible position. When careful enquiries are made about the nature of the endorsement and no doubt remains that the draft has been properly presented on behalf of the person in whose favour it has been drawn the bank cannot be guilty of any negligence and will be discharged under the provisions of this section read with section 10 (y<sup>1</sup>). But when a bank issued a draft on a branch of theirs for payment to H and G or order and H appeared at the branch and was refused payment as he was not known to the manager and thereupon an arrangement was made with a constituent of the bank, who had a current account there that H could endorse it in his favour and accordingly the amount of the draft was deposited in his current account without any confirmation or identification of the signature of G the payment of this draft was not held to have been made in good faith and without negligence (y<sup>2</sup>).

- 86.** If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which Parties not consenting discharged by qualified or limited acceptance substitutes a different place or time for payment, or which, where the

(y) Statements of object and reasons

(y<sup>1</sup>) *Barkat Ali v Imperial Bank of India*, 1945 Lah 213, 222 I C 134.

(y<sup>2</sup>) *PC Bhandari v Punjab National Bank*, 1938 Lah 520; 181 I C

drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance

*Explanation* —An acceptance is qualified—

- (a) Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated,
- (b) where it undertakes the payment of part only of the sum ordered to be paid,
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere, or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere,
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due

## NOTES

This section lays down that a qualified acceptance of a bill discharges all parties who do not consent to it. The acceptance of a bill may either be general or qualified. When a bill is accepted according to the apparent tenor of it the acceptance is general, but when a bill is not accepted as drawn *i.e.* according to its apparent tenor but with certain qualification or variation the acceptance is a qualified acceptance. The drawee of a bill or a hundi has the option of either accepting it or not accepting it. If he has entered into a contract with the drawer already, he is bound by such contract to accept the bill or he will make himself liable for the actual damage caused by non-acceptance. When, therefore, the drawee accepts a bill the holder has the right to insist on a full and unqualified acceptance *i.e.* acceptance according to the apparent tenor of the bill. If the drawee, under such circumstances, refuse to accept it

unconditionally the holder can treat the bill as dishonoured by non-acceptance and protest it accordingly (z) But if the holder without treating the bill as dishonoured, acquiesces in a qualified acceptance by the drawee without the consent of the prior parties to the bill he does so at his own risk and the prior parties whose consent is not obtained for such qualified acceptance will not be bound by it The result of taking such qualified acceptance will be to discharge all prior parties not consenting to such acceptance The holder has to notify all prior parties about this qualified acceptance and if after such notice the prior parties signify their consent to such acceptance their liability will continue as before

**Qualified acceptance.**—An acceptance may be qualified in a variety of ways (1) It may be conditional *ie* it may make the payment of a bill by the acceptor dependent on the fulfilment of a condition stated by him in his acceptance, or (2) it may be partial *ie* an acceptance to pay part only of the amount for which the bill is drawn, or (3) it may be local *ie* to pay only at a particular specified place, unless, however, the acceptance expressly states to pay there and there only, it will be regarded as a general acceptance, or to pay at a place different from what is mentioned in the instrument, or (4) it may be qualified as to time *ie* when it is to be paid at a time different from that fixed in the instrument by the drawer, or (5) finally, it may be qualified by being accepted by one or more of the drawees and not by all (a) when the joint drawees are not partners (b) In case the joint drawees are partners, acceptance by one will operate as acceptance by all

It is to be noted that the section does not exhaustively lay down the instances of qualified acceptance Besides, what have been stated in this section, as instances of other kinds of qualified acceptance may be mentioned the condition of making payment only through a particular medium *eg* bank notes or in a different currency Whether an acceptance is conditional or not is a question of law to be determined according to the circumstances of each particular case (c) The section does not apply to cheques (c<sup>1</sup>)

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(z) Section 91 *post*, *Becham v Garcias*, (1870) 1 Camp 425 (n)

(a) Halsbury Vol 11 p 488

(b) 27 Bom LR 283

(c) *Meyer & Co v De Croix*, (1891) AC 520 (HL); *Sproat v Mathews*, (1786) 1 TR 182

(c<sup>1</sup>) *Silchar Bank v Pioneer Bank*, 1951 Assam 127

**87.** Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties, and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof

The provisions of this section are subject to those of sections 20, 49, 86 and 125

### NOTES

This section deals with the effect of any material change in a negotiable instrument in order that fraud may not be committed and the instruments may not be tampered with. Any act which changes the legal effect of the instrument, which causes it to speak a different language in legal effect from that in which it originally spoke, that is, which changes the legal identity or character of the instrument either in its terms or in the relation of the parties, is a material change or technically an alteration (*d*). It is a general principle of law that contractual relationship cannot be altered without the consent of the parties concerned. And if a material alteration is made in an instrument without the consent of the prior parties it follows that such prior parties will not be bound by the altered instrument, for to make such persons liable would be to make for them a contract they never agreed to (*e*). In spite of any material alteration if a party admits his liability thereunder he is bound to the extent of his admission (*f*). But can the holder then revert to the original position *ie* the position before the alteration was effected? No, for where an instrument is materially altered all persons who are parties to the instruments at the time of the alteration and have not consented thereto are discharged from liability on the instrument and after such

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- (*d*) *Krishna v Narendrabala*, 25 CWN 942, 34 CLJ 333, 66 IC 694, *Gour v Prasanna*, 33 Cal 812, 816; 10 CWN 788, 3 CLJ 363.
- (*e*) *Gagan v Dhuraidhur*, 7 Cal 616, 9 CLR 275, *Mohesh v Kamra*, 12 Cal 313, *Gour v Prasanna*, 33 Cal 812, 816; 10 CWN 788, 3 CLJ 363, *Atmatam v Umedarm*, 25 Bom. 616, 3 Bom. LR 213.
- (*f*) *Zulfikar v Robert*, 1925 Oudh 486, 85 IC 423; 1 Oudh & NLR 1008



alteration the holder cannot fall back on the contract as it existed prior to the alteration, where a man has been wicked enough to alter a document fraudulently it is inconsistent with equity and good conscience or with public policy that he should be entitled to recover upon it (g) A material alteration, therefore, will make the instrument absolutely void against all prior parties who have not consented to it as no man should be permitted to attempt to commit fraud without running serious risk of loss after detection (h) The plea of material alteration cannot be successfully taken by a party who has consented to it and, therefore, a person who becomes a party subsequent to such alteration will be bound by the altered instrument on the ground of estoppel (i) A material alteration made before the note was issued (j) or while the instrument was unstamped and incomplete (k) will not invalidate the instrument The principles of this section apply to non-negotiable instrument as well when such alterations are fraudulent (l) When the alteration is apparent onus lies on the plaintiff to explain it and shew it is not material (l<sup>1</sup>)

**Material Alteration:—**In order to avoid an instrument the alteration must be material, that is, an alteration which changes the nature of the instrument An act which changes the legal effect of the instrument, that is, which changes the legal identity or character of the instrument either in its terms or in the relation of the parties is a material alteration It is the effect of the act upon the instrument and not the particular manner in which it is done that is material and hence an alteration to be material must be an actual alteration whether by erasure, interlineation, addition, or substitution of a material matter affecting the identity of the instrument or contract It must also be in a material part of the instrument and must affect the rights and obligations of the parties thereto (m)

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(g) *Gagun v Dhurondhur*, 7 Cal 616, 9 CLR 275

(h) *Barumal v Dwarakadas*, 25 IC 667

(i) Section 88 *post*

(j) *Downes v Richardson*, (1822) 5 B & A 674, *Madam Pillai v Athinarayana*, 1925 Mad 929, 87 IC 48, 21 LW 532

(k) *Foster v Driscoll*, (1929) 1 KB 470

(l) Byles (19th Ed) 291

(l<sup>1</sup>) *Srichand v Lajya*, 1939 Lah 31 182 IC 330; *P Subramania v Porthana*, 1942 Mad 709 204 IC 511

(m) *Krishna v Narendrabala*, 25 CWN 942, 34 CLJ 333, 66 IC 694, *Gour v Prasanna*, 33 Cal 812, 816, 10 CWN 788; 3 CLJ 363, *Lakshammal v Narasimha*, 38 Mad 746; 25 MLJ 572; 14 MLT 398, (1913) MWN 833, 21 IC 455, *Ramsingh v Ghulab Rai*, 1 Lah 262; 2 Lah LJ 316; 55 IC 610; *Jaharmal v R. Chettyer*, 14 Rang 29, 1936 Rang 136, *Krushnamacharanam v Gouro*, 1940 Mad 62 189 IC 795 also, 1941 Mad 383 199 IC 534

The question of materiality of an alteration is a question of law. It does not matter whether the parties ever benefited or not by the alteration (*n*). As instances of material alteration may be considered the following *eg* alteration of dates, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, addition of a place of payment without the acceptor's assent (*o*), of the instrument. It has a direct bearing on the due date, the time for limitation and determining the period for which the interest has to be paid (*p*). Therefore, any alteration of the date unless made with the consent of the prior parties to the instrument, will make the instrument void (*q*). Even if the alteration of the date does not affect the time for payment the instrument will be void as not being the contract originally entered into (*r*). This rule would apply with equal force to the alteration of the month or the year or both. But where such an alteration is made for the correction of a clerical mistake it will not be a material alteration (*s*). Nor does it come within the mischief of this section when a bill is drawn in the ordinary form payable some days after sight and the due date is noted in a corner of the bill and it is altered from time to time as fresh time for payment is given to the acceptor. The reason is that such a note of the due date does not form part of the bill but is only a docket for office purposes (*t*).

**Sum payable.**—Any alteration of the sum payable made in the instrument is a material alteration (*u*) and it does not matter that such an alteration benefits the party sought to be

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- (*n*) Halsbury, Vol 11 p 556, *Gour v Prasanna*, 33 Cal 812, 816; 10 CWN 788, 3 CLJ 363, *Jaharmal v R Chatter*, 14 Rang 29; 1936 Rang 136, *P Subramana v Porthana*, 1942 Mad 709 204 IC 511
- (*o*) B of Ex Act, Sec 64 (2)
- (*p*) *Gobindasami v Kuppasami*, 12 Mad 239, *Atmaram v Umedram*, 25 Bom 616, 3 Bom LR 213, *Namdev v Swadeshi*, 28 Bom LR 944, *Ramsami v Bhawan*, 3 MHCR 247
- (*q*) *Pestonji v Cox*, 52 Bom 589, 49 CLJ 32, 1928 MWN 881; 1928 PC 231, 26 ALJ 1245, 113 IC 124, 55 IA 353, (PC); 30 Bom LR 1503, *Kedarnath v Gerrard*, 77 IC 761, *Khola v Mandeli*, 1926 Bom 491, 28 Bom LR 944
- (*r*) *Mukhdam Bux v Shoakatali*, 13 ALJ 683
- (*s*) In the matter of *Jogodia Cotton Mills Ltd*, 31 CWN 683, 1927 Cal 612
- (*t*) *Pestonji v Cox*, 52 Bom 589, 49 CLJ 32, 55 IA 353, 30 Bom LR 1503, 1928 PC 231; 26 ALJ 1245; 1928 MWN 881, 113 IC 124, on appeal from 50 Bom 656
- (*u*) *Imperial Bank of Canada v Bank of Hamilton*, (1903) AC 49

charged with as the identity of the contract is destroyed (*v*) Therefore, the alteration of a sum of Rs 200- to Rs 100- which is to the advantage of the person liable will be a material alteration to make the instrument void Similarly, any change of the rate of interest will be a material alteration within the meaning of this section (*w*) although the alteration effected is of a rate which is not enforceable in law as, for instance, of a penal rate which the court cannot grant (*x*), or where the alteration is to the advantage of the person liable, being from a higher to a lower rate (*y*) Alteration of lawful interest into 6 p c is a material alteration (*z*)

**Interpolation:**—Subsequent interpolation of a stipulation to pay interest without the knowledge of the executant is a material alteration and vitiates the contract (*a*) So, also, the insertion of a rate of interest not agreed upon by the parties when the note was first made is a material alteration (*b*) But where the words 'at 5 per cent per mensem' were already written in the instrument the interpolation of the words 'with interest' before that was held not to be a material alteration (*c*) as the rate was clearly provided and the insertion only carried out the common intention of the parties

**Time of payment:**—An alteration of the time when money is due and payable is a material alteration and will have the effect of vitiating the instrument Thus, the alteration of a note payable three months after date into one payable three months after sight (*d*) or an endorsement postponing payment of a note payable on demand is a material alteration (*e*) But, as all notes, in which no time for payment is specified, are deemed to be notes payable 'on demand' the insertion of the words 'on demand' in such notes does not amount to material alteration as it does not alter the legal character of the instru-

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- (*v*) *Madam Pillai v Athinatarayana*, 21 LW 532; 1925 Mad 929, 87 IC 48, (See *Mohesh v Kamini*, 12 Cal 313), *Rangayya v Sundara*, 1943 Mad 511; 210 IC 50
  - (*w*) *Christachari v Karibasayya*, 9 Mad 399 (FB), *Sunder v Mahadeo*, 23 ALJ 253, 1925 All 282, 87 IC 796; *Jaharmal v R Chettyar*, 14 Rang 29, 1936 Rang 136
  - (*x*) *Odeychand v Bhaskar*, 6 Bom 371
  - (*y*) *Godla v Narisamulu*, 3 Rang 227, 1925 Rang 283; 89 IC 657
  - (*z*) *Warrington v Early*, (1853) 3 E & B 763
  - (*a*) *Sunder v Mahadeo*, 1925 All 282, 23 ALJ 253, 87 IC 796
  - (*b*) *Tribern v Sahu*, 11 Bur LT 257, 50 IC 517
  - (*c*) *Lala Tulsiram v Ram Saran*, 29 CWN 965, 49 MLJ 132; 22 LW 86, 27 Bom LR 777, 86 IC 552; 1925 PC 80, 26 Punj LR 419
  - (*d*) *Long v Moore*, (1790) 3 Esp 155 (notes)
  - (*e*) *Jaharmal v R Chettyar*, 14 Rang 29; 1936 Rang 136

ment (f) As has been stated before, where the due date is mentioned on the top of the instrument and not in the body of the bill, and such date is changed from time to time to grant extension of time for payment to the acceptor at his request, the alteration will not attract the operation of this section (g)

**Place of payment:**—Apart from the question of convenience and inconvenience of payment the place where payment is to be made has an additional importance as it determines the forum of suit Therefore, any alteration in the place of payment is a material alteration and vitiates the contract (h) Erasure or cancellation of a place mentioned in the instrument (i), or altering one place to another (j), or inserting a place where none is mentioned (k) in the deed will amount to a material alteration and avoid the contract An alteration of the place of drawing is also a material alteration (l)

**Medium of payment:**—When at the time of contract a certain medium of payment is agreed upon by the parties the payment must be made through that medium as a part of the original contract Any alteration of that medium, as for instance, (from pounds to francs ) will be a material alteration. It may be that this conversion results in no loss to the parties concerned But yet that is not the original contract and there may be the possibility of some injury to the acceptor who cannot be compelled to depart from the original contract Such alteration will, therefore, discharge the prior parties if they have not assented to it

**Parties:**—The addition of a new party or the exclusion of an existing party may seriously affect the position of the other parties to the instrument Therefore, any change affecting the number or the respective relation of the parties or their legal character will be a material alteration to discharge the prior parties who do not consent to such alteration Addition of a new party to a contract constitutes a material alteration and the effect of such alteration is to destroy the identity of the instrument as it may seriously affect the position of the parties e.g. if the original makers have a demand against the payee

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(f) *Aldous v Cornwell*, (1868) LR 3 QB 573

(g) *Pestonj v Cox*, 52 Bom 589, 49 CLJ 32, 1928 PC 213, 26 ALJ 1245, 30 Bom LR 1503; 55 IA 353, 1928 MWN 881, 113 IC 124

(h) *Lakshammal v Narasinha*, 38 Mad 746, 25 MLJ 572, 1913 MWN 833, 21 IC 455

(i) *Mackintosh v Haydon*, (1826) By & M 362

(j) *Tidmarsh v Grover*, (1813) 1 M. & S 735

(k) *Burchfield v Moore*, (1854) 23 LJQB 261

(l) *Koch v Dicks*, (1933) KB 307

which they could lawfully set off against the bond, the addition of another maker may destroy that right or the addition of the place of residence of the additional maker may enable the payee to change the forum of the suit that may be brought by him to enforce the bond (*m*) Addition of names, as joint executants, made without the consent of other parties is a material alteration unless it is made to carry out the common intention of the parties (*n*) Any variation from the original contract affecting the position of the parties will discharge the whole instrument Where it was agreed that two persons would jointly execute a note and be jointly liable for the amount and one of them signed the note and the signature of the other was forged on the note, the note was not enforceable against any (*o*) Similarly, there was material alteration where it was found that one of the executants had forged the signature of the other on the note and the creditor was aware of this fact (*p*) It is doubtful whether the facts of this case properly come under the operation of this section which applies to alterations *after* execution and not to anything done *at* the time of execution Therefore, where a pronote was alleged to have been executed by two persons and it was found that the signature of one of the executants was forged it was found that the present section did not apply (*q*) Conversion of several into a joint liability by altering 'I promise' into 'We promise' (*r*), or forgery of the mark of a person (*s*), or alteration of the name of payee (*t*), is a material alteration sufficient to make the instrument void

**Consideration:**—The insertion of a particular consideration for 'value received' constituted a material alteration as, where, the words "for value received generally" were substituted by "for the good will and trade of K deceased" (*u*)

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- (*m*) *Gour v Prasanna*, 33 Cal 812, 10 CWN 788, 3 CLJ 363; *Rangayya v Sundara* 1943 Mad 511 210 IC 50 *Iqbal v Durga*, 1935 Oudh 434 156 IC 17
- (*n*) *Ma Sein v Chidambaran*, 9 IC 463, 4 Bur LT 19, *Gagan v Dhuramudhar*, 7 Cal 616; 9 CLR 257
- (*o*) *Amirtham v Nanyah*, 26 MLJ 257, 15 MLT 205 1914 MWN 250, 1 LW 243, 23 IC 464, *Kumarsami v Dhiravram*, 40 LW 802, 67 MLJ 841, 1935 Mad 40 103 IC 382
- (*p*) *Santhu v Jamal*, 1928 Mad 1092, 1928 MWN 591, 112 IC 404
- (*q*) *Madam Pillai v Athinarayana*, 1925 Mad 929, 21 LW 532, 87 IC 48, *Marudamutha v Raghavan*, 40 LW 803, (See *Tanugamta*, v *Sangan*, 16 MLT 185)
- (*r*) *Perring v Home*, (1823) 4 Bing 28
- (*s*) *Santhu v Jamal*, 1928 Mad 1092, 1928 MWN 591, 112 IC 404
- (*t*) *Kamal v Nyamuddin*, 20 ALJ 987, 1923 All 123; 11 IC 412
- (*u*) *Knoll v Williams*, (1809) 10 East, 431

**Bearer or order:**—The addition of the words “bearer” or ‘order’ after the name of the payee constitutes a material alteration to vitiate the instrument as it converts a non-negotiable instrument into a negotiable one (v) Striking out of the words ‘or bearer’ from a note payable ‘to order or bearer’ or the substitution of the word ‘bearer’ for ‘order’ (w) but not of the word ‘order’ for ‘bearer’ (x) constitutes a material alteration

**Addition of attesting witnesses.**—The interpolation of a name of a witness in a document like the negotiable instrument which need not be attested is not a material alteration that would render the document void (y) The reason of this rule is that the addition of a witness in a document which does not require attestation goes only to the proof of the execution of the document but does not affect the nature or operation of the contract and the contract remains as before But in relation to a document which requires attestation the position is different. As for instance, a document creating a mortgage without the attesting witnesses will operate as a simple bond and not as a mortgage instrument So, where, in such a document, originally without any attesting witness, some witnesses are interpolated, the nature of the contract is changed as it converts the simple bond into a mortgage bond There the alteration will be material Following this principle the addition of two witnesses in an improperly stamped promote to turn it into a bond was held to be a material alteration (z) Mutilation which will have the effect of making some material word disappear will be a material alteration (a) An accidental obliteration of the number of a Bank Note is not a material alteration within the meaning of this section (b) An earlier decision of the Bombay High Court where it was held that the addition of witnesses in a contract would in all cases vitiate the contract (c) does not appear to be based on good reason and has not been followed in a later Bombay case (c<sup>1</sup>)

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(v) *Aldous v Cornwell*, LR 3 QB 573

(w) Daniel, Sec 1935

(x) *Attwood v Griffin*, (1826)) 2 C & P 368

(y) *Mohesh v Kamini*, 12 Cal 313, *Rammayar v Shanmugan*, 15 Mad. 70, *Venkatesh v Bavasubraya*, 15 Bom 44, *Mahomed v Suryanarayana*, 1 MLJ 388 (Contra, *Sitaram v Daji*, 7 Bom 418)

(z) *Mangal v Jaswant*, 1930 Lah 959, 31 PLR 930, 130 IC 522

(a) *Lakshammammal v Narasimha*, 38 Mad 746, 25 MLJ 572, 14 MLT. 398, 1913 MWN 833, 21 IC 445

(b) *Honkong Banking Corporation v Lo Lee Shi*, 110 IC 127, (1928) PC 116, 55 MLJ 627, 28 LW 880 (PC)

(c) *Sitaram v Daji*, 7 Bom 418

(c<sup>1</sup>) *Venkatesh v Bavasubraya*, 15 Bom. 44

**Other material alterations:**—Besides what have been mentioned before the other alterations which have been held to be material are the addition or alteration of a rate of interest, the insertion of a particular rate of exchange, the addition of a name of a new maker to a joint or several note or the elimination of the name of an existing maker and the conversion of a joint note into a joint and several note. A crossing of a cheque as authorised by the statute becomes a material part of it, so that an alteration or obliteration of the crossing or an addition thereto, when not authorised, becomes a material alteration of the cheque (*d*)

**Alterations not material:**—The addition of a wrong date for the maturity of the instrument, the elimination of the words 'or order' in an instrument payable to order, or the alteration of the drawer's style, when wrongly stated in the bill, to his true style as signed by him in his acceptance, the conversion of a blank endorsement into a special endorsement which is sanctioned by the statute are not material alterations (*e*). Alterations made before the instrument is complete and negotiated (*f*), or alteration effected to make explicit what was implicit in the document (*g*), or made to correct a mistake (*h*), or the addition in the margin of a statement of fact (*i*), or a forged alteration in a note which does not form a part of it (*i*<sup>1</sup>) or a provision for payment of interest in default of payment at maturity (*j*), or alterations made with mutual consent of the parties (*k*), and if not made with the fraudulent intention of defrauding a third party (*l*), are also not material alterations and do not vitiate the instrument. Nor will an instrument be vitiated by an alteration made in good faith by a party without the knowledge of the others if it was intended to carry out the original intention of the parties (*m*). Besides the above, there are other alterations which do not vitiate the instrument and they have been noticed before

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(*d*) Halsbury Vol 11 p 556-557

(*e*) *Ibid*, p 557

(*f*) *Webber v Maddocks*, (1811) 3 Camp 1

(*g*) *Tikam v Ganga*, 11 BHC R 203, *Ma Shawe v Raman*, 1 LBR 255

(*h*) *London Provincial Bank v Roberts*, (1874) 22 WR 402, *Gopal v Veerappan*, 22 MLJ 121, 13 IC 95

(*i*) *Ede v Kanto*, 3 Cal 220

(*i*<sup>1</sup>) *Karakattitathil v Kanayarakkal*, 1936 Mad 616 163 IC 803

(*j*) *Bradley v Agra Bank*, 101 PR 1885

(*k*) *Issac v Bai Fatima*, 10 Bom 487

(*l*) *Madam Pillai v Athinarayana*, 21 LW 532 1925 Mad 929, 87 IC 48

(*m*) *Ananda v Ananda*, 44 Cal 154, 25 CLJ 155; 35 IC 182; *Lachma v Srideo*, 1939 All 248 181 IC 863

**Effect:**—It has already been noticed that if a material alteration is made in an instrument without the consent of the prior parties, such prior parties will not be bound by the altered instrument, for, to make such persons liable under an altered instrument would be to make for them a contract they never agreed to (n) But even in such cases a decree will be passed if a prior party admits his liability (o) All persons who are parties to the instrument at the time of the alteration are discharged from liability if they have not consented to the alteration, and after such alteration, if it is a fraudulent one, the holder cannot fall back upon the pre-existing contract, for, where a man has been wicked enough to alter a document fraudulently it is inconsistent with equity or good conscience or with sound policy that he should be entitled to recover upon it (p) A material alteration, therefore, which is fraudulent, deprives the holder from at all recovering anything He cannot sue upon the original consideration even if such a suit be otherwise competent (q)

**Suit on original consideration:**—When a document is inadmissible in evidence on account of insufficiency of stamp or on account of any material alteration therein an action does not necessarily lie on the original consideration In such cases the point for consideration will be if the loan and the document which may be inadmissible because of insufficiency of stamp or because of any material alteration made there in form one indivisible transaction or if they are different transactions separate from one another If the loan advanced is based on the note they are indivisible If the loan advanced is independent of the note executed subsequently or contemporaneously as evidence of the loan they are separate transactions When a cause of action for money is once complete in itself whether for goods sold or money lent or for any other claim and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always as a rule, sue for the original debt provided he has not endorsed or lost or parted with the bill or note to make the debtor liable to a third person In such cases the bill or note is said to be taken by the creditor on account of the debt and if it is not paid at maturity the

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- (n) *Gagan v Dhuramudhar*, 7 Cal 616, 9 C LR 257, *Atmaram v Umedram*, 25 Bom 610, 3 Bom LR 213; *Mohesh v Kamini*, 12 Cal 313, *Gour v Prasanna*, 33 Cal 812, 10 CWN 888, 3 CLJ 363
- (o) *Zulfiquer v Roberts*, 1925 Oudh 486, 85 IC 423
- (p) *Gagan v Dhuramudhar*, 7 Cal 616, 9 CLR 257; *Gour v Prasanna*, 33 Cal 812, 10 CWN 788, 3 CLJ 363
- (q) *Ibid*



creditor may disregard the bill and sue for the original consideration. But when the original cause of action is the bill or note itself and does not exist independently of it, as for instance, when in consideration of A depositing money with B, B contracts by a promissory note to repay it with interest, here there is no cause of action for money lent, or otherwise than upon the note itself, because the deposit is made upon the terms contained in the note and no other. In such a case the note is the only contract between the parties and if for any reason the note is not admissible in evidence the creditor must lose his money ( $q^1$ ). A suit on original consideration will lie if brought within the period of limitation from the passing of the consideration when the debt and the note do not form one transaction i.e. when the loan is independent of the note ( $r$ ). A suit in such cases will lie on original consideration even after the statutory period from the passing of original consideration if limitation is saved by acknowledgment or payment ( $r^1$ ). The alteration in such cases, though material must not be tainted with fraud ( $s$ ). There is no difference if the holder permits a stranger to make the alteration ( $t$ ). But when the holder is not a party to a material alteration made by a stranger and has no laches his rights are not affected ( $t^1$ ).

**Stamp:—**When an alteration is made with the consent of the prior parties the alteration, if not made for the purpose of carrying out the original intention of the parties, will make a fresh contract and, as such, will require a new stamp.

**Position of subsequent parties:—**Since it is the parties liable on the instrument at the time of alteration who are discharged, the liability of persons who become parties to the instrument subsequently to the alteration remains unaffected. Therefore, when a person endorses an altered instrument even without the knowledge of the alteration he becomes liable to

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- ( $q^1$ ) *Sheonath v Sarju*, 1943 All 220; 1943 AWR 157, 206 IC 578 (FB), *Zulfiqar v Robert*, 1925 Oudh 486 85 IC 424, *Akbar v. Seikh Khan*, 7 Cal 256, *Sridhar v Johor*, 49 CWN 37, *Govind v Ram*, 29 CLJ 508, *Promoth v Dwarik*, 23 Cal 851, *Parsotom v Taley Singh*, 26 All 178 1903 AWN 217, *Khuda Bux v Yasin*, 1937 Pesh 103, 172 IC 598, *Samunathan v Palaniappa*, 18 CWN 617 41 IA 142 26 IC 225, *Gour v Prasanna*, 33 Cal 812; 10 CWN 780, 3 CLJ 363, *Subrahmanya v Krishna*, 23 Mad 137
- ( $r$ ) *Jogendra v Sachindra*, 40 CWN 399, *Gopmath v Chamah*, 1938 All 504; 177 IC 815
- ( $r^1$ ) *Sridhar v Johor*, 49 CWN 37
- ( $s$ ) Cp Halsbury, Vol II, P 557
- ( $t$ ) *Gagan v Dhuranidhar*, 7 Cal 616; 9 CLR 257
- ( $t^1$ ) *Krushnamacharanam v Gour*, 1940 Mad. 62 189 IC 795 also 1941 Mad 338 199 IC 534.

the endorsee and the acceptor of an altered bill becomes liable under the same (u)

**88.** An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument

Acceptor or indorser  
bound notwithstanding  
previous alteration

### NOTES

According to the previous section it is only those persons who are parties to the instrument at the time of the alteration who will be discharged from liability and not those who become parties to it after the alteration. The present section specifically lays down what follows from the last section, namely, that persons who with or without knowledge of the alteration become parties to the altered contract cannot complain of the alteration. These subsequent parties will be bound by the terms of the altered document & they will be bound to pay according to the tenor of the instrument at the time of their contract. A drawee of a bill cannot substitute a third party in his place and if a third party is substituted in the place of the drawee his acceptance will not render him liable (v)

**89.** Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

Payment of instrument  
on which alteration is  
not apparent

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

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(u) See 88, *post*.

(v) *Jagannath v Heap & Co*, 2 I.C. 804

## NOTES

This section affords protection to a person or a banker liable to make payment when there is a material alteration in a note, cheque or bill or when the crossing of a cheque is obliterated. The conditions of protection are that,

first, the payment must be made according to the apparent tenor of the document at the time of the payment,

secondly, such payment must be made in due course, and, thirdly, the alteration or the crossing shall not be apparent *ie* not noticeable on reasonable scrutiny. Thus, where, A draws a cheque for Rs 10/- in favour of B and B, without A's knowledge, alters the amount to Rs 100/- in such a way that at the time of presentation it looks like a cheque for Rs 100/- and the bank, on presentation, pays the amount to B bona fide in due course, the bank is entitled to the protection under the section and can debit the amount against A (*w*). This is an exception to the general rule that the drawee of a cheque or the acceptor of a bill has no right to debit more than he is directed to pay. This special protection is meant for the facility of commerce and is based on the principle "that whenever one of two innocent parties must suffer by the act of a third person, he who has enabled such person to occasion the loss must sustain it." This principle has, however, been restricted to this that the neglect must be in the transaction itself and must be the proximate and direct cause that led to the loss complained of (*x*).

**90.** If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished

Extinguishment of rights of action on bill in acceptor's hands

## NOTES

This section deals with the final discharge of a bill. The acceptor of a bill is the principal debtor and the other parties are sureties. So, where the acceptor becomes the holder the natural inference is that he has paid for it and nothing is due under it (*y*), but this can be shewn to be untrue (*z*). Where the acceptor

(*w*) *Bhagaman v Creet*, 31 Cal 249

(*x*) *Morrison v Verschoyle*, 6 CWN 429

(*y*) *Shearman v Fleming*, 5 BLR 619

(*z*) *Kalpurasad v Narayan*, 1927 Pat 417, 103 I.C. 488

in his own right becomes the holder, the present right and the liability unite in one and the same person and cancel each other (a) and the bill is discharged. But the acceptor must hold it at or after maturity to discharge the bill. When a bill is negotiated back to the acceptor before maturity, he may reissue it but he cannot enforce payment against any intervening party to whom he was liable (b). If there are more acceptors than one and the bill is negotiated in the hand of any one of them who holds it till maturity the bill is discharged (c). He shall hold the bill in his own right and not as the agent of, or administrator or executor to the estate of, some other person. An acceptor who holds the instrument with a defective title cannot be said to hold it in his own right. Where a pronote has no endorsement of any payment and there is nothing to shew that the endorsee is aware of any payment to the endorser and the endorsee is a holder in due course, he is entitled to recover according to the apparent tenor of the instrument. If the instrument has been discharged, the remedy of the person paying is to sue for a refund of the amount, he has to pay over again, from the original payee (d).

**Extent of the section:**—The section, as worded, applies only to bills. But the position of an acceptor of a bill is the same as that of a maker of a pronote. Therefore, the same principle would apply to payments at or after maturity by the maker of a note (e).

## CHAPTER VIII

### OF NOTICE OF DISHONOUR

**91.** A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted

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- (a) *Neale v Tarton*, (1827) 4 Bing 149
  - (b) *Foster v Dawber*, (1851) 6 Ex 839
  - (c) *Harmer v Steele*, (1849) 4 Ex 1
  - (d) *Annamalai v Maung Shang*, 1927 Rang 161, 5 Bur L J 241, 103 IC 139, *Venkantha v Subbayya*, 64 MLJ 241, *Muthu v Vellu*, 1916 MWN 107; 4 LW 34, 35 IC 591
  - (e) *Beaumont v Greathead*, (1846) 2 CB 494

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured

### NOTES

A bill may be dishonoured by (1) non-acceptance and (11) by non-payment. The present section deals with dishonour by non-acceptance. The drawee is to accept the bill within forty eight hours of presentation (f). If he does not signify his acceptance or refuses to accept the bill within the aforesaid period it will be taken as dishonoured. When there are more drawees than one who are not partners refusal by one, even though others are willing to accept, will amount to dishonour of the bill at the option of the holder, as he has a right to demand acceptance from all the drawees to make them all liable. In such circumstances he may also treat it as accepted. If the holder chooses to treat the bill as accepted it will be qualified acceptance and the prior parties to the bill will stand discharged unless they assent to it. In the case of joint drawees who are partners acceptance by one of them will mean acceptance by all as the act of one partner will be deemed to be on behalf of the partnership. Therefore, in the case where some partners accept the bill while others refuse to do so, the bill will, it is submitted, be deemed to have been accepted to make all the drawees liable under the bill. The effect of refusal by some partners will be a matter of settlement between the partners *inter se* and will have no bearing on the holder.

Dishonour gives rise to cause of action for suit (g)

**Presentment essential:**—Where presentation is not excused the bill has to be presented for acceptance. Without proof of such presentation and refusal to accept there can be no dishonour of the bill and no claim will lie (h). A suit was brought by the endorsee of a bill of exchange against the endorser and the drawer. He failed to prove presentment but nevertheless he got a decree. The endorser appealed—the drawer not being a party to the appeal. The appellate court dismissed the whole suit against both the defendants. On appeal to the High Court it was held that as proof of presentment was essential before the plaintiff could recover judgment against the drawer the suit was rightly dismissed notwithstanding that the drawer did not appeal (i).

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(f) Sec 63, *ante*

(g) *Ram Ravi v Pralhaddas*, 20 Bom 133

(h) *Kudappa v Thirupathi*, 1925 Mad 444, 2 L W 210; 86 I C 576.

(i) *Sangarmal v Bhudev Sahu*, 19 I C 251

**Dishonour for drawee's incompetence:**—The drawee must be a man who is competent to enter into a contract. If the drawee is incompetent to enter into a valid contract he cannot, for obvious reasons, accept a bill. Therefore, when it is found that the drawee is one incompetent to contract the bill will be deemed to have been dishonoured. Similarly, when the drawee is a fictitious person or a person who is dead or is a bankrupt or one who cannot, after reasonable search, be found, the bill is said to have been dishonoured.

**92.** A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

### NOTES

This section relates to dishonour by non-payment of a promissory note, bill of exchange or cheque. In case of a bill of exchange it has to be presented for acceptance and when the drawee accepts the bill he becomes the principal debtor liable to pay the bill at maturity when it has to be presented to him for payment. If on such presentment at maturity he fails to make payment the bill is dishonoured by non-payment. Similarly, when the maker of a promissory note fails to make payment on the due date the note is dishonoured. When the banker refuses to make payment of a cheque on presentment the cheque is dishonoured and the holder can at once proceed against the drawer and other parties, if any, on the cheque (*j*). But to return a cheque with an endorsement that it will be honoured after collection of the assets of the drawer does not constitute dishonour (*j*<sup>1</sup>).

The provision of this section and sections 91 and 93 dealing with dishonour are applicable to bills of exchange payable at sight or on demand. If the drawee refuses to accept such bills, such refusal amounts to dishonour by non-payment (*k*). When presentment for payment is excused, the instrument is dishonoured if payment is not made when it is overdue.

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(j) B of Ex Act, Sec 47

(j<sup>1</sup>) *Silchar Bank v Pioneer Bank*, 1951 Assam 127  
1914; *Ram v Gulab*, 1 Lah 262, 2 Lah LJ 316 55 IC 610.

(k) *Veereppa v Vellayan*, 10 LW. 39; 1919 MWN 780, 52 IC 370

**93.** When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque

### NOTES

The section deals with the steps that have to be taken, after dishonour of a negotiable instrument by non-acceptance or non-payment, in order to bind all parties to such an instrument other than the principal debtors. Notice of such dishonour of the instrument is a condition precedent to make the parties liable. On dishonour the holder of the instrument, or some party thereto who remains liable thereon, must give notice of dishonour to all the other parties except the maker, acceptor, or the drawee of a note, bill or cheque respectively, whom the holder seeks to make liable (*l*). In default of such notice all the parties other than the maker, the acceptor and the drawee who do not require any notice of dishonour under the last clause of this section will be discharged from liability. In short, in the case of negotiable instruments notice of dishonour is absolutely necessary to make the parties liable on the instrument as it is regarded as a part of the contract of the drawer and the indorsers of a bill that they will be liable only if presentment is duly made, and, in case of dishonour, they are promptly informed that acceptance or payment has not been made (*m*). The reason of the rule is that without such information the drawer and the indorsers cannot safeguard their interests by taking the necessary steps for getting payments from other parties liable to them and from withdrawing their effects from the drawee or the acceptor (*n*). Therefore,

(*l*) *Jambu v Palamappa*, 26 Mad 526, 528, 530, 13 M.L.J. 252 (F.B.), *Jagannath v Ramdas*, 25 I.C. 881; 243 P.L.R. 1914, 140 P.W.R. 1914, *Ram v Gulab*, 1 Lah 262; 2 Lah L.J. 316, 55 I.C. 610

(*m*) *Berridge v Fitzgerald*, (1869) L.R. 4 Q.B. 639

(*n*) *Pigue v Golabram*, (1864) 1 W.R. 75

when a bill is dishonoured by non-acceptance and no notice of such dishonour is given but the holder presents it for payment at maturity and on non-payment gives notice of such dishonour, the drawer and the endorser stand discharged from liability as no notice of dishonour by non-acceptance has been given. If, however, the notice of dishonour by non-acceptance is given then no notice of dishonour by non-payment is necessary in case such bill is again presented for payment at maturity and dishonoured. But if the drawee having at first dishonoured the bill by non-acceptance again accepts it before maturity and then fails to make payment when presented at maturity, notice of dishonour by non-payment becomes necessary and want of such notice will discharge the drawer and the indorsers (o). The maker of a note and the acceptor of a bill and the drawee of a cheque are specifically excluded by the section from those who are entitled to such notice. The provisions of this section dealing with dishonour by non-payment are applicable to bills of exchange payable at sight or on demand (p), and also, to accommodation bills or notes (q). Even in a case where the instrument payable on demand is indorsed after dishonour and the fact of dishonour is known to the endorser, notice of dishonour by non-acceptance or non-payment is absolutely necessary to make the parties liable (r).

**Time of notice:**—Notice of dishonour must be given within a reasonable time from the date of dishonour (s). As to what constitutes reasonable time depends on the circumstances of each case (t) and has been laid down in section 106 *supra*.

**Who can give notice:**—It is the holder or some party to the instrument who is liable thereon at the time of its dishonour by non-acceptance or non-payment or at the time of giving notice of dishonour that can give notice. Obviously, therefore, a stranger who is not a party to the instrument cannot give a notice of dishonour. If a notice is given by a stranger it will be a nullity (u). Nor a person who, though a party to the instrument, has been discharged from his liability for want of due notice

(o) B of Ex Act, Sec 48 (2)

(p) *Veerappa v Vellayan*, 10 L W 39, (1919) M W N 780; 52 I C 370

(q) *Wilkes v Jacks*, (1794) 1 Peake 267

(r) *Hemadri v Seshamma*, (1931) Mad 113, (1930) M W N 1232, 130 I C 477; *Jagannath v Lakshmana*, 47 M L J 475, (1925) Mad 132; 35 M L T. 120, 80 I C 932, *Kailasam v Chidhambaram*, (1934) M W N 1337 1935 Mad 22 152 I C 129

(s) *Subhomal v Pohumal*, 13 I C 255, 140 P W R (1914), 5 T L R 168

(t) *Motz v Motz*, 6 A L J 78, 81; (1883) A W N 216, *Madho v Durga*, 33 A l l 4, 7 A L J 815; 6 I C 793

(u) *East v Smith*, (1847) 16 L J Q B 292



within a reasonable time is competent to give an effectual notice, for, after such discharge he does not remain liable on the instrument and his position is like that of a stranger. It is not necessary that the party giving such notice should have knowledge of the fact of dishonour or should have received any such notice himself. Therefore, where the holder of a bill gives notice of dishonour one day late to the first endorser and the latter who had no knowledge of dishonour immediately gives notice to the drawer on the same day the notice is bad as the indorser is not a person liable on the instrument at the time of giving the notice, he having been discharged by the late notice of the holder (*v*) and this would be so even if successive notices by one party to another did not reach the drawer earlier (*w*). Notice given by one party to the other enures to the benefit of all intermediate parties and can be taken advantage of by them (*x*). An agent can give notice on behalf of his principal (*y*) and such notice need not necessarily be in the name of the principal (*z*).

**Notice to whom:**—No notice is necessary to the maker of a dishonoured promissory note or acceptor or the drawee of a bill or cheque as provided in the second paragraph of this section. Notice must be given to all the other parties to the instruments whom the holder seeks to charge with liability. No notice is to be given to the guarantors who are not parties to the instruments and who are not discharged from liability by reason of delay in the giving of notice by the holder (*a*). When two or more persons are drawers or indorsers notice to one of them is sufficient to bind all. But where the liability of such drawers or indorsers is joint and several notice to one of them is not sufficient to make all such persons severally liable to the holder. Notice to the manager of a joint Hindu family is good to bind all but the members of the family can set up a defence of defective notice to the managing members in a suit by the holder (*b*).

**Effect of failure to give notice:**—It has been held that dishonour forms a part of the cause of action of the holder (*c*). After dishonour the condition precedent to make all

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(*v*) *Jennings v Roberts*, (1855) 24 L J Q B 102

(*w*) *Turner v Leech*, (1821) 4 B & Ald 451

(*x*) *Ibid*

(*y*) *Stewart v Kennett*, (1809) 2 Camp 177

(*z*) B of Ex Act, Sec 49(2)

(*a*) *Carter v White*, (1882) 20 Ch. D 225 affirmed in (1883) 25 Ch. D. 666

(*b*) *Krishna v Hari*, 20 Bom 488

(*c*) *Jaganatha v Lakshmana*, (1925) Mad 132; 48 MLJ 475; 35 MLT 120, 80 IC 932; *Kadappa v Thrupathi*, 21 LW 210; 86 IC 576, *Mulchand v Suganchand*, 1 Bom. 23, *Ram v. Pralhad*, 20 Bom. 133, *Kottam v Kaunan*, 1951 Mad. 632.

parties, other than the maker or acceptor or drawee liable, is to give them due notice unless notice is excused under Section 98. It follows, therefore, that want of due notice will discharge all parties to the instrument except the maker or the acceptor, who does not require any such notice, not only from liability under the instrument but also from the original consideration (*d*). Knowledge of dishonour does not dispense with the necessity of the formal notice (*e*). The fact of presentment and issue of or notice of dishonour should be clearly stated in the plaint (*e*<sup>1</sup>).

**Hundis:**—In the absence of a local usage to the contrary the provisions of this Act will apply to hundis as well (*f*) and the doctrine of notice of dishonour, as laid down in this Act, in the absence of a contrary local usage, will apply to hundis (*g*). In the case of a hundi payable at sight notice of dishonour is not compulsory (*g*<sup>1</sup>).

#### 94. Notice of dishonour may be given to a duly authorised agent of the person to

whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee, may be oral or written, may, if written, be sent by post, and may be in any form, but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon, and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended

If the notice is duly directed and sent by post and

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- (*d*) *Kuttayan v Palaniappa*, 27 Mad 540, *Krishnan v Rajmal*, 24 Bom. 360 2 Bom LR 25, CP, *Wallbhoy v Jugjebandas*, (1936) Nag 260  
 (*e*) *Hemadri v Seshama*, (1931) Mad 113; (1930) MWN 1232, 130 IC 477, *Jagnatha v Lakshmana*, (1925) Mad 132, 47 MLJ 475; 35 MLT 120; 80 IC 932, *Kailasam v Chidambaram*, (1934) MWN 1337 1935 Mad 22 152 IC 129  
 (*e*<sup>1</sup>) *Kottam v Kaunan*, 1951 Mad 623  
 (*f*) *Krishna v Hari*, 20 Bom 488  
 (*g*) *Moti v Moti*, 6 All 78 81 (1883) A WN 216, *Madho v Durga*, 33 All 4, 7 ALJ 815, 6 IC 793; *Mulchand v Suganchand*, 1 Bom. 23.  
 (*g*<sup>1</sup>) *Khuda Bux v Yasir*, 1937 Pesh 103; 172 IC. 598.

miscarries,, such miscarriage does not render the notice invalid

## NOTES

This is an enabling section and is a corollary to the previous section. It lays down to whom notice may be served its form, its contents and the time and place of service and the agency by which such service may be effected.

The formal notice is essential to bind the parties. The fact that a party knows beforehand that the instrument has been dishonoured does not disentitle him to a notice from the holder (*h*). Mere knowledge is ineffectual without formal notice (*i*). Demand is not sufficient notice. When, therefore, the payee of a hundi meets the drawer after maturity and demands payment it is not sufficient notice (*j*).

**May be given to whom:—**Besides the persons mentioned in the previous section the notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given. By duly authorised agent is not meant only one who has a special authority to receive it. It covers one who has authority to conduct a business generally and, therefore, has an implied authority to receive the notice. A solicitor is not such an agent and a notice to a solicitor is bad (*k*). But a notice given to the wife of the endorser (*l*) or to his clerk (*m*) is good. A notice given to a deceased endorser without knowledge of his death is good (*n*) but such notice like all notices of dishonour must be given at the place of business or where the indorser resided at the time of his death. But if the party is not ignorant of the death of the indorser notice should be given to his legal representative (*o*). Notice to an assignee of an insolvent is optional (*p*).

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- (*h*) *Hemadri v Seshama*, (1931) Mad 113, (1931) MWN 1232, 130 IC 477, *Jaganatha v Lakshmana*, (1925) Mad 132, 47 MLJ 475, 35 MLT 120, 80 IC 932, *Kailasam v Chudhambaram*, (1934) MWN 1337, 1935 Mad 22, 152 IC 129
- (*i*) *Ibid*
- (*j*) *Subhomal v Pohumul*, 13 IC 255; 140 PWR 1914; 5 SLR 168. But see (1920) MWN LXV (Notes)
- (*k*) *Crosse v Smith*, (1813) 1 M & S 545
- (*l*) *Honsego v Cowne*, (1837) 2 M & W 348
- (*m*) *Allen v Edmundson*, (1848) 2 Ex 719
- (*n*) Sec 97 *post*
- (*o*) Halsbury Vol 11 p 545
- (*p*) *Re Bellman*, (1877) 4 Ch D 795

**Other provisions:**—Notice may be given in writing or verbally (*q*) It may be sent by post (*r*) or through a messenger (*s*) Once a notice is correctly addressed and duly posted the notice is good and the sender will not be held responsible even if it miscarries (*t*) Wrong address will not vitiate the notice if such address is due to the negligence or the action of the party entitled to the notice (*u*) Delay in delivery by the post office does not affect the position of the parties if it is posted in time (*v*)

**Form:**—No particular form or set of words is necessary to make a notice valid provided the fact of dishonour, the way in which it has been dishonoured, and the intention to make the addressee of the notice liable are expressly or impliedly stated in the notice (*w*) The notice need not even be signed (*x*) but must identify the instrument dishonoured (*y*) Trivial misdiscreptions in giving the names of the parties or of the instrument do not, however, vitiate the notice (*z*)

**95.** Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93

## NOTES

It has already been observed that a notice given under section 93 by the holder or any other party to the dishonoured instrument enures to the benefit of all parties intermediate between the party giving the notice and the party to whom such notice is given (*a*) Therefore, where A, B, C, D are the indorsers of a bill of exchange of which E is the holder, a notice given by E the holder to A will enure to the benefit of B, C, D But

- (*q*) *Metcalf v Richardson*, (1852) 11 CB 1011, *Predeanux v Criddle*, (1869) LR 4 QB 455
- (*r*) *Dobree v Eastwood*, (1827) 3 C & P 250
- (*s*) *Pearson v Crellan*, (1805) 2 Smith (K B) 404
- (*t*) *Hewitt v Thomson*, (1836) 1 Moo & Rob 543
- (*u*) *Manna v Moors*, (1825) 1 Ry and Moo 249, *Clarke v Sharpe*, (1838) 3 M & W 166, *Hewitt v Thomson*, (1836) 7 Moo & Rob. 543
- (*v*) *Stocken v Collin*, (1841) 7 M & W 515
- (*w*) *Miller v National Bank of India*, 19 Cal 146, 155, *Jambu v Palaniappa*, 26 Mad 526, 528, 530, 13 MLJ 252 (FB)
- (*x*) *Maxwell v Bram*, (1864) 10 LT (NS) 301
- (*y*) *Bromage v Voughan*, (1846) 9 QB 608
- (*z*) *Stockman v Parr*, (1843) 11 M & W 809
- (*a*) *Turner v Leech*, (1821) B & Ald 451

suppose E does not give notice of dishonour to A but contents himself by giving notice only to D to make him only liable. In such circumstances D who has a right of recourse against all prior parties will not be without a remedy under the terms of this section. D can give a notice to C and C to B and so on. It is deemed prudent for each of the parties to give notice to all the parties prior to himself to avoid the risk arising out of omission to give, or out of any defect in a notice to a prior party. The time limit prescribed for the giving of notice by the holder has been extended to the prior parties, that is to say, just as the holder has to give notice to the prior parties within a reasonable time from the dishonour so each of the prior parties receiving such notice of dishonour shall give notice to the other prior parties within a reasonable time from the receipt of the notice of dishonour.

**96.** When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

### NOTES

Under the English law where a party to a bill receives due notice of dishonour he has, after the receipt of such notice, the same period of time for giving notice to the antecedent parties that the holder has after dishonour (b). Similar provision is made in this section. The holder of an instrument may at his option himself give a notice to the prior parties or his agent may give such notice to the prior parties after dishonour within a reasonable time. The agent with whom the instrument is deposited for presentment may, at his option, like an independent holder, give such notice of dishonour to the prior parties within a reasonable time after dishonour or he may, without giving notice to the prior parties, give such notice to his principal. When the agent chooses the latter course the principal will be able to give notice of dishonour to the prior parties and in so doing he will be entitled to a further time *i.e.* reasonable time from the receipt of the agent's notice to him. Therefore, when a bill due on the 31st March was presented for payment on the same day by the banker of the payee and dishonoured and the bank sent the bill on the following day to the payee who on the 2nd April sent the notice to the drawer

by post the notice was sufficient (c) Branches of a bank though agents of one principal firm are to be regarded as distinct entities for the purpose of notice of dishonour and each will be entitled to notice of dishonour within a reasonable time and the principal of this section applies to them (d). Similarly, the principals of this section for computation of time for giving notice of dishonour will apply to an acceptor for honour of one of the endorser of a bill as such an acceptor is regarded as an agent of the endorser (e)

**97.** When the party to whom notice of dishonour is despatched is dead,  
 When party to whom notice given is dead but the party despatching the notice is ignorant of his death,  
 the notice is sufficient

### NOTES

When a person is dead notice of dishonour should be given to his legal representatives (f) A notice given to a dead person about whose death the person giving the notice has knowledge is a nullity It is possible that the holder or any other person bound to give notice of dishonour may not be aware of the fact of the death of the person to whom such notice of dishonour is to be given This section provides that if the holder, ignorant of the fact of the death, addresses a notice to a dead person such notice will be good

**98.** No notice of dishonour is necessary—

- When notice of dishonour is unnecessary (a) when it is dispensed with by the party entitled thereto,  
 (b) in order to charge the drawer when he has countermanded payment;  
 (c) when the party charged could not suffer damage for want of notice,  
 (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other

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(c) *Scott v Lifford*, (1808) 9 East 347

(d) *Fulding & Co v Correy*, (1898) 1 QB 268

(e) *Goodall v Polhill*, (1845) 14 L J C P 146

(f) Section 94 ante

reason, unable without any fault of his own to give it,

- (e) to charge the drawers when the acceptor is also a drawer,
- (f) in the case of a promissory note which is not negotiable,
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

### NOTES

This section is an exception to the general rule, laid down in section 93, that in case of dishonour it is absolutely necessary to give a notice of such dishonour to the party, except the drawee, acceptor or the maker, sought to be made liable. This section lays down when notice of dishonour is not necessary and the person relying upon any of the terms of the section must establish all the requirements thereof (g), although this may not be specifically pleaded (g<sup>1</sup>).

**Clause (a) Dispensed with.**—In the case of negotiable instruments notice of dishonour is absolutely necessary to make the parties liable on the instrument as it is regarded as a part of the contract of the drawer and the endorser of a bill that they will be liable only if presentment is duly made and in case of dishonour they are promptly informed that acceptance or payment has been refused (h). Since it is a part of the contract it follows that where a party entitled to notice of dishonour has dispensed with or expressly waived it no such notice is necessary (i). Waiver may be express as where it is written on the instrument itself as “Notice of dishonour waived”. It may be implied from agreement as where the drawer of a bill, before maturity, intimated to the holder that he had no regular place of residence and would call and see if the acceptor had paid the bill. In such a case notice was deemed to have been

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- (g) *Ram v Golub*, 1 Lah 262, 2 Lah LJ 316, 55 IC 610; *Mithan v Paltu*, 14 IC 51; *Amiruddin v Bahadur*, 30 Cal 977, 7 CWN 878, *Jambu v Sundararaja*, 26 Mad 239, 12 MLJ 267
  - (g<sup>1</sup>) *Mrihaya v S S R S Mfirm*, 1936 Mad 506 163, IC 743
  - (h) *Berridge v Fitzgerald*, (1869) LR 4 QB 639
  - (i) *Ram v Golub*, 1 Lah 262, 2 Lah LJ 316; 55 IC 610, *Mithan v. Paltu*, 14 IC 51, *Amiruddi v Bahadur*, 30 Cal 977, 7 CWN 878, *Jambu v Sundararaja*, 26 Mad 239, 12 MLJ 267

dispensed with (*j*) So also where a drawer intimated to the holder that the bill would not be paid on presentment, notice of dishonour was deemed to have been dispensed with (*k*) A waiver of notice of dishonour in favour of the holder enures for the benefit of all subsequent parties (*l*) A waiver of notice by the drawer with respect to one of the hundis by renewing it by another will not affect his right to object to the other hundis in suit on the ground of want of notice of dishonour (*m*) Waiver may be made at any time before dishonour

**Clause (b). Payment countermanded:**—A bill or a cheque is an order from the drawer to pay and before payment he has a right to countermand such order When a drawer countermands payment no notice of dishonour to him is necessary (*n*) The reason of the rule is that the drawer having himself stopped payment and caused dishonour is not entitled to a notice (*o*)

**Clause (c). No damage to party charged:**—No notice of dishonour is necessary where the party charged suffers no damage for want of it Therefore, neither presentment nor notice of dishonour is necessary if it is shewn that at the time when the hundi was drawn there were no funds belonging to the drawer in the hands of the drawee (*p*) Notice is not necessary where the acceptance of the bill is illegal (*q*) or where the drawee is under no obligation to the drawer to accept (*r*) or where the payee endorses the note to a third person after it is time barred (*r*<sup>1</sup>) The onus of proving that the party charged has not suffered damage is on him who alleges exemption of notice on this ground (*s*) This rule applies when the suit is brought on a negotiable instrument and not on a collateral security (*t*) or on the original consideration (*u*)

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- (*j*) *Phipson v Knaller*, (1815) 4 Camp 285  
 (*k*) *Brett v Lovett*, (1811) 13 East 213  
 (*l*) *Rabey v Gilbert*, (1861) 30 LJ 170  
 (*m*) *Ram v Golub*, 1 Lah 262, 2 Lah LJ 316, 55 IC 610  
 (*n*) *Mithan v Paltu*, 14 IC 51  
 (*o*) *Hill v Heap*, (1823) Dow & Ry (WNP) 57  
 (*p*) 2 Bom LR 891  
 (*q*) *Sukhlal v Eastern Bank* 46 Cal 564  
 (*r*) *Dennes v Morrice*, (1800) 3 Esp 158  
 (*r*<sup>1</sup>) *Kalamdan v Kattiyah*, 1940 Mad 85 50 LW 649  
 (*s*) *Jhanda v Toda*, 10 IC 405, *Madho v Durga*, 33 All 4; 7 ALJ 815, 6 IC 793, *Gaya v Sirmam*, 15 ALJ 267, 39 All 364, 15 ALJ 267, 39 IC 649, *Amiruddi v Bahadur*, 30 Cal 977, 7 CWN 878, *Jambur v Sundararaja*, 26 Mad 239, 12 MLJ 267, *Sridhar v Buxiram*, 1932 Nag 55 139 IC 305  
 (*t*) *Shanmugam v Chinnasami*, 14 Mad 470  
 (*u*) *Krishnaji v Rajmal*, 24 Bom. 300, 2 Bom LR. 25



**Clause (d). Party not found:**—No notice is necessary to a party when his place of residence or business is not known. But the holder must make a diligent and reasonable search. If after such reasonable search it is not found notice is excused (*v*) And if after such search it is found notice must be given within a reasonable time but the time spent in the search will be excluded from computation (*w*) Again, when a party, bound to give notice, cannot give the notice on account of some inevitable accident or on account of circumstances beyond his control, like death, omission to give notice will be excused, but when owing to dangerous illness or wrong address given by the indorser (*x*), or where the giving of notice will involve desecration of a sacred day (*y*) the delay in giving notice will be excused, but when these special circumstances cease notice must be given Where the drawee is a fictitious person or is one not competent to contract, notice of dishonour will be excused in relation to the drawer and also to the indorser if he was aware of this fact at the time of his indorsement (*z*)

**Clause (e) :**—When there are several drawers and the acceptor is one of them, all the drawers would be liable even though no notice of dishonour has been given (*a*) Similarly, where the drawer is the same person as the acceptor no notice is necessary (*b*) The reason of these rules is that being a party to the dishonour he cannot ask for any formal notice of the same and when one of the drawers is an acceptor his knowledge of dishonour is the knowledge of the others The same rule will apply when the drawer and the drawee are one and same person But, where of the two partners one is a drawer and the other is an acceptor of a bill, the rule will not apply as they are not partners in respect of the drawing of the bill and the bill was not drawn by one of them on behalf of both (*c*)

**Clause (f) Non-negotiable note:**—All promissory notes are not negotiable & are transferable by indorsement and delivery. When a non-negotiable promissory note is indorsed, the indorsee has no claim against the maker or other indorsers and, therefore,

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(*v*) *Bateman v Joseph*, (1810) 12 East 433

(*w*) *Furth v Thrush*, (1828) 8 B & C 387

(*x*) *Hewitt v Thomson*, (1836) 1 Moo & Rob 543

(*y*) *Lindo v Unsworth*, (1811) 2 Camp 602

(*z*) Grant on Banking, (7th Ed) p 130

(*a*) *Kundan v Bhikari*, 1929 All 254, 51 All. 530, 27 A L J 333, 116 IC 293

(*b*) *Jambu v Sundaraja*, 26 Mad 239, 12 M L J 267

(*c*) Ibid

no one can be prejudiced by its non-presentment or want of notice (d)

**Clause (g):**—What this clause lays down amounts to waiver of notice. If, after dishonour but before the time for giving notice of it has expired, the party, entitled to such a notice, with full knowledge of the fact of dishonour, promises unconditionally to pay the amount due on the instrument he dispenses with the notice of dishonour, and if he does so after the time for notice has expired he waives such notice (*e*). This promise to pay must be by the party charged and need not be express (*e*<sup>1</sup>). Where the drawer and the acceptor has a common secretary the knowledge of the latter of the fact of dishonour does not absolve the holder of the duty of giving notice unless it can be shewn that it is his duty to communicate his knowledge on behalf of the one to the other (*f*).

## CHAPTER IX

## OF NOTING AND PROTEST

**99.** When a promissory note or bill of exchange has been dishonoured by Noting non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges

(d) *Plimly v Westly*, (1835) 2 Bing (N C) 249

(e) *Cordery v Colville*, (1863), 14 CB (NS) 374, *Kilby v Rochussen*, (1865) 18 CB (NS) 357

(e<sup>1</sup>) *Belgaum Bank v Bando*, 1945 Bom 359 47 Bom LR 336

(f) *Re Fenwick Stobart & Co*, (1902) 1 Ch 507

## NOTES

The holder of a dishonoured inland bill, besides giving notice of dishonour to the parties entitled to such notice, may, at his option, cause such dishonour to be noted and protested. Noting means authentication of the fact of a bill having been dishonoured and is a step preliminary to protest. It consists of making a note on the instrument itself or on a slip of paper attached to the instrument or partly on the instrument and partly on the slip specifying in it the (i) fact of dishonour, (ii) the date of dishonour, (iii) the reasons, if any, assigned for dishonour, (iv) if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and (v) the notary's charges. Having noted these the notary will draw a protest at his convenience *i.e.* he will formally certify that he has authenticated the fact of dishonour by non-acceptance or non-payment. There are certain advantages in causing even an inland instrument to be noted. Not only is the notary a person whose business is to know and adopt the proper measures when an instrument is dishonoured, and, therefore, both the best agent for carrying out of such measures and the best witness at a trial of their having been carried out, but his minute on the instrument itself is the most satisfactory record of the non-payment of the instrument for the information of the parties who may thereafter be called upon to pay (*g*).

Noting must be made within a reasonable time after dishonour. What constitutes reasonable time has been stated in section 105 *post*.

After dishonour the bill to be noted has to be taken to the notary public who will present it again for acceptance or for payment and, on refusal of the party to accept or to pay, he will note the bill.

In the case of inland instruments noting and protest are optional with the holder, while in the case of foreign instruments, protest becomes necessary if required by the law of the land where the instrument is drawn (*h*). Although noting has, by itself, no legal effect, still there are, besides what have already been mentioned, some special advantages following from this course *e.g.*

(1) where a protest has to be made within a specified time it is sufficient if it is noted for protest within that time and formal protest may follow afterwards. In other words, noting

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(*g*) Halsbury Vol II p 537

(*h*) Section 104 *post*

may provisionally serve the purpose of protest which may follow afterwards (2)

(11) Noting enables a bill to be accepted (j) or paid (k) for honour even though there is no protest made

Noting, unless followed by protest, is not of itself any evidence of presentment or dishonour even though it may contain the full name of the notary public (l) But the notary public may himself give evidence to prove this When, however, a protest has been made, the court shall, on proof of protest, presume the fact of dishonour until it is disproved (m)

**100.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

## NOTES

A protest is, properly speaking, a solemn declaration on behalf of the holder against any loss to be sustained by the non-acceptance or by the non-payment of a bill or a note as the case may be. It must be made and signed by a notary public, an official recognised by law, whose business it is to make and attest important documents (*n*). A one rupee foreign bill stamp bearing the word 'notarial' must be affixed on the certificate of protest. The stamp is to be cancelled by the notary

(2) Sec 104A *post*

(1) Section 108 *post*

(k) Section 113 *post*

(1) *Bombay City Bank v Moonjee*, Bourke, P C Rep, 274

(m) Section 119 *post*

(n) Halsbury Vol II p 535

In the Punjab and the Madras Presidency the requisite stamp for this purpose is Rs 2/-

**How protest is made:**—The notary or his clerk proceeds to make a formal demand upon the drawee or acceptor for acceptance or payment, as the case may be, and on refusal, notes the bill, that is, he writes a minute on the face of the bill. This minute consists of his initials, the date, the noting charges and a reference to the notary's register. A ticket or label is also attached to the bill, on which is written the answer given to the notary's clerk who makes the presentment *e.g.* 'No order' or 'No effects'. Before sending out the bill the notary makes a full copy of it in his register and subsequently adds the answer if any (*o*). Noting followed by the solemn declaration stated above is called protest.

A protest may be made out in duplicate and the second copy is as much primary evidence as the copy first drawn out. No witnesses are required to attest a protest by a notary public but it must be stamped (*p*).

**Object of Protest by Notary Public:**—The object of requiring the protest to be made by the Notary Public is that his office is universally recognised not only in the courts of this country but in those of every civilised nation. By the law of Nations he has credit everywhere (*q*).

**Protest for better security:**—Where the acceptor becomes bankrupt or insolvent or suspends payment, before maturity of the bill, the holder may cause the bill to be protested for better security against the drawer and indorser. The advantage of this course, beyond the inherent one of having the circumstances placed on the record for the information of the drawer and indorser, is that it enables the bill to be accepted for honour. It is necessary, if it is desired to obtain an acceptance or payment for honour, that the instrument should be protested or at least noted for protest. The expenses, however, of a protest for better security are not recoverable, whereas the expenses for protest for non-acceptance or non-payment are recoverable (*r*).

**Protest where acceptance is qualified or partial:**—In the case of a foreign bill which has been accepted in part the bill must be protested as to the balance, but where there is a qualified acceptance the holder is entitled to treat the bill as dis-

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(*o*) Ibid

(*p*) Ibid

(*q*) Ibid p 536

(*r*) Ibid p 537

honoured by non-acceptance and the better course is to so treat it and to protest absolutely for non-acceptance according to the tenor of the bill, unless the holder is authorised by antecedent parties to assent to the qualification, otherwise any antecedent party (whether drawer or indorser) who has not authorised, or does not subsequently assent to, the qualification is released from his liability on the bill (s)

**Householder's Protest:**—In the case where a protest is necessary but where the services of a notary cannot be obtained at the time and the place when and where they are required, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate signed by them attesting the dishonour of the instrument and such a certificate will in all respects operate as if it were a notarial protest (t) This rule of law is not, however, provided in this Act

**Place of Protest**—The general rule is that the bill must be protested at the place where it is dishonoured, but when it has been presented through the post office and returned by post dishonoured it may be protested at the place to which it has been returned and on the day of its return, if received during the business hours, and, if not received during the business hours, then not later than on the next business day (u)

**Time**—Noting of a dishonoured instrument must take place on the day of dishonour but when it has been duly noted the protest may be extended as of the date of noting (v)

**Excuses of delay:**—Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence, but when the cause of delay ceases to operate, the instrument must be noted or protested with reasonable diligence

Protest is dispensed with altogether by circumstances which would dispense with notice of dishonour (w)

**101.** A protest under section 100 must  
Contents of protest contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon,

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(s) Ibid p 538

(t) Ibid p 536, sec 94 B of E Act

(u) Ibid pp 537, 538

(v) Ibid p 538

(w) Ibid

- (b) the name of the person for whom and against whom the instrument has been protested,
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public, the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found,
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal,
- (e) the subscription of the notary public making the protest,
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter

### NOTES

The last paragraph was added by section 5 of the Negotiable Instruments Act II of 1885

The section lays down what perfect protest under the foregoing section shall contain and without which the protest will not be regular

A protest, besides being made and signed by a notary, must contain a copy of the instrument and must specify (1) the person at whose request the instrument is protested, (2) the place and date of protest, (3) the cause or reason for protesting the instrument, (4) the demand made, and (5) the answer given, if any, or the fact that the drawee or acceptor could not be found. Where the instrument is lost or destroyed or is wrongly detained

from the person entitled to hold it, protest may be made on a copy or written particulars thereof. A protest may be made out in duplicate and the second copy is as much primary evidence as the copy first drawn out (x)

Besides the above the present section enjoins that the protest should contain also the name of the person against whom the instrument has been protested, a statement that payment or acceptance or better security has been demanded by the notary, and the subscription of the notary public making the protest. All the items laid down in the section are essential to the validity of a protest. If any of the items be left out the protest will be ineffectual.

**Stamp:**—Under the Indian Stamp Act, Art 50 of Schedule I a protest must bear a stamp of Re 1/- except in the Punjab and Madras Presidency where it is Rs 2/-

**102.** When a promissory note or bill of exchange is required by law to be protested, Notice of protest notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary public who makes the protest

## NOTES

When the law requires that a note or a bill should be protested, it is the notice of such protest and not the notice of dishonour that should be given by the holder to fix the liabilities of the antecedent parties to the note or the bill as the case may be. Protest being necessary in the case of dishonour of a foreign bill, the holder must send notice of protest to all the parties liable on the bill. The parties who are liable on such a bill are entitled to have a notice of protest and not a notice of dishonour. Such a notice can be given either by the holder or by the notary who makes the protest. The section does not say whether a copy of the protest itself should be sent to the party. If the party entitled to a notice is informed that the bill has been dishonoured by non-acceptance or non-payment and has been protested, it is a sufficient notice.

**Notice of protest when excused:**—The rules that govern notice of dishonour also govern notice of protest. It, therefore, follows that the conditions under which a notice of



dishonour is excused will also excuse a notice of protest, *e g* by express or implied waiver. When a person promises to pay the amount subsequent to the dishonour of the instrument, notice of protest is waived and he remains liable without any such notice, as by the promise to pay he admits his liability, he admits everything which is necessary to render him liable (*y*). We have already noticed that circumstances over which a holder has no control and which are not due to his default, misconduct or negligence will excuse delay in giving notice of dishonour. And similar circumstances will excuse delay in giving notice of protest. But as soon as such circumstances will cease to exist notice of protest will have to be given. It is not clear whether there is any excuse in favour of a holder in due course, when a prior holder has failed to protest, on account of dishonour by non-acceptance. But, as under the section the rules relating to dishonour apply to protest, it is submitted, that such an excuse exists in favour of a subsequent holder in due course (*z*).

**103.** All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

### NOTES

When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable and no further presentment for payment to, or demand on the drawee is necessary (*a*). This section, however, says that the bill may be protested for in the place where it is made payable, that is to say, protesting at the place where it is made payable is left to the discretion of the holder. It is not compulsory, as under the English law, to protest at that place. The holder at his option may protest where the drawee resides unless the payment has been made at or before maturity. In any case no further presentment is necessary.

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(*y*) *Gibbon v Coggon*, (1809) 2 Camp. 188

(*z*) *Bhasyam & Adiga* p 476

(*a*) *Halsbury Vol II* p 538

**104.** Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn

Protest of foreign bills

### NOTES

This section deals only with the foreign bills and not with foreign promissory notes. Protest is, therefore, necessary for foreign bills only and not for foreign promissory notes or inland bills. For 'British India' in the notes below should be read as the 'Territory of India' except Jammu and Kashmere, or the Provinces of Pakistan as the case may be (*vide* notes at pp 3, 8)

**Foreign bills:**—It is foreign bills only that require protest. Foreign bills may be of three classes, *eg* (i) Bills drawn outside British India and made payable at or drawn upon a person resident at a place outside British India, (ii) Bills drawn outside British India and made payable in British India or drawn upon a person resident therein, (iii) Bills drawn in British India but made payable outside British India or drawn upon a person resident outside British India and not made payable in British India (*a*<sup>1</sup>). Therefore, the view that a bill of exchange, drawn upon a resident in British India is an inland bill wherever it may have been drawn and no protest is necessary (*b*) is *prima facie* incorrect. In coming to this conclusion the learned Judge says that the place of drawing is immaterial—a view hardly consistent with the wording of section 11 *ante* or with the English law on which the observation is sought to be based. (*Vide* notes to Sec 11). It is submitted, therefore, that if a bill is drawn outside British India upon a person in British India, protest is necessary as the bill is a foreign bill.

Protest is necessary only in the case of a foreign bill appearing on its face to be such. Where such a bill has been dishonoured by non-acceptance it must be protested for non-acceptance, but where it has not been so dishonoured but is dishonoured by non-payment it must be duly protested for non-payment, otherwise, the drawers and indorsers are discharged. But a bill which is in reality a foreign bill but does not on the face of it appear to be so, need not be protested in the case of dishonour (*c*). A bill which has been protested for non-acceptance may subsequently be protested for non-payment (*d*).

**Reason of the rule:**—Under the law of many countries

(*a*<sup>1</sup>) Section 11 *ante*

(*b*) *Kidston v Seth Bros*, 57 Cal 730; (1930) Cal 692, 129 I C 190

(*c*) Halsbury Vol II p 536

(*d*) *Ibid* p 537

protest for dishonour by non-acceptance or non-payment is absolutely necessary and, therefore, to avoid risks by having uniformity in international transactions, the present section requires protest in case of foreign bills. But it is not all foreign bills which require protest for dishonour. It is only when the law of the place where such bills are drawn requires protest, that a protest is necessary under the Indian law. Besides the above there is another reason of protest in case of foreign bills. It affords an authentic and satisfactory evidence of dishonour to the drawer who from his residence abroad might experience a difficulty in making proper enquiries on the subject and be compelled to rely on the representation of the holder. It also furnishes an indorsee with the best evidence to charge an antecedent party abroad, for foreign courts give credit to the act of the public functionary in the same manner as a protest under the seal of a foreign notary is evidence in our courts of the dishonour of a bill payable abroad (*e*). The use, and indeed the necessity of protest on foreign bills of exchange, in order to prove in many cases the regularity of proceedings thereupon, is too obvious to warrant us in dispensing with such an instrument in any case where the custom of merchants, as reported in the authorities of law, appears to have required it (*f*). Protest is essential as the holder cannot prove dishonour but can prove protest only (*g*). On proof of protest court shall presume the fact of dishonour (*h*).

**104-A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

## NOTES

This section was added by section 6 of the Amending Act II of 1885. Noting within the time allowed by law is essential and protest may follow any time after that and before suit. Here

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(*e*) Byles 19th Ed 241

(*f*) *Hoare v Cazenove*, (1812) 16 East 391, (per Ellenborough)

(*g*) *Borough v Perkins*, (1703) 1 Salk 131

(*h*) Section 119 *post*

noting is equivalent to protest Where an instrument is required by the statute to be protested before some further proceeding is taken, it is sufficient that the instrument has been noted for protest before the taking of that proceeding and the formal protest may be extended at any time thereafter as of the date of noting (1) Protest when drawn up relates back to the date of noting.

## CHAPTER X

### OF REASONABLE TIME

**105.** In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments, in calculating such time, public holidays shall be excluded

### NOTES

There can be no strict line of demarcation between a reasonable time and an unreasonable time What is reasonable time in one case under a particular set of circumstances may not be so in another case where those circumstances do not exist "One decision goes but a little way to establish a precedent for the other" (1) Although the Madras High Court has held that what is reasonable time is purely a question of fact (2) it is really a mixed question of law and fact (3) The factors such as the distance between the parties, the available communication, the usual course of dealing, and the nature of the instrument must be considered by the court in arriving at a decision as to whether the particular time in the case is in law reasonable (4) Thus, where a hundi payable at sight was drawn on the 19th March in Lyallpur upon a firm at Karachi and put into circulation on the

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(1) Halsbury Vol II p 538

(2) Daniel, Sec 604

(3) *D' Sena v Narr*, 31 Mad 364

(4) *Bahadur v Ghulub*, 11 Lah 34, (1929) Lah 577, 116 IC 887;  
*Matlal v Chogemull*, 11 Cal 344, *Katas v Dawlat*, 1 Lah LJ 158, 56 IC 936.

(m) *Ibid*

2nd of April, the period of 11 days taken for presentment was not held unreasonable in view of the circumstances stated above (*n*)

**Re Bills:**—What constitutes reasonable time also varies according to the nature of the instruments (*o*) Thus, a bill payable on demand cannot be placed on the same footing as a promissory note payable on demand, nor does a cheque fall into the category of either of the two Different considerations will weigh with the court in determining what will constitute a reasonable time with respect to the presentation for payment of each class of the aforesaid instruments The reasonableness of the time for presenting a bill of exchange for payment is a mixed question of law and fact depending on the particular circumstances of the case (*p*) Bills on demand are meant for immediate payment while the notes on demand are not meant for immediate payment as they are continuing securities, and, therefore, reasonable time for presentment of the two will be different (*q*)

A bill payable on demand should be presented the next day after the payee has received it if the parties live in the same place If the bill be sent by post for presentment it must be presented for payment on the day following the day of receipt (*r*)

**Re Pronotes:**—It has already been stated that a pronote payable on demand differs from a bill payable on demand as the former is, and the latter is not, a continuing security The effect of this is that such a pronote is not meant for immediate payment and, therefore, a more liberal construction may be given to a reasonable time in the case of presentment for payment of promissory notes than in the case of bills

**Re Cheques:**—Cheques are not generally intended by the drawer for being long in circulation, and, therefore, the holder must present it for payment as early as he can (*s*) If the holder, without presenting it early, keeps it in his hand longer than is necessary he does so at his own risk Although the drawer remains liable, except to the extent of the loss suffered by him on account of the laches of the holder, the intermediate parties will be absolutely discharged by non-presentation within

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(*n*) *Katari v Daulat*, 1 Lah LJ 158, 56 IC 936

(*o*) *Bahadur v Ghulub*, 11 Lah 34, (1929) Lah 577, 116 IC 887

(*p*) *Ibid*, *Katari v Daulat*, 1 Lah LJ 158, 56 IC 936

(*q*) *Jagannatha v Lakshmanan*, 47 MLJ 475, 35 MLJ 120, (1925) Mad 132, 80 IC 932

(*r*) Daniel, Section 603

(*s*) See Section 73 *ante*

a reasonable time Cheques have, therefore, to be presented not later than on the next day after they are received, if the place of delivery and payment be the same (*t*), before the closing of the banking hours (*u*) But if the place of delivery be different from where it is payable, the cheque will have to be sent on the day following the day of delivery to the place of payment either by post or through a messenger and the presentation for payment will be considered to be made within a reasonable time if it is done on the next day following its receipt In calculating such reasonable time public holidays are to be excluded The same rule will apply if the holder does not receive the instrument directly from the drawer but receives it by endorsement or delivery from the payee—the intermediate parties each getting a day to take the necessary steps (See also notes to sections 73 and 84)

In the case of dishonour it must, as has already been stated, be noted on the same day although protest may follow later (*v*) The application of this strict law will entail considerable hardship in this country as there are no notaries in the Mofussil and as there is no provision of noting and protesting by a householder or a substantial person of the locality when notaries are not available

**106.** If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour

## NOTES

This section deals with the time of notice of dishonour It lays down a definite time when such notice of dishonour shall

(*t*) *Rickford v Ridge*, (1810) 2 Camp 537

(*u*) *Hare v Henty*, (1861) 30 LJCP 302, *Predeaux v Criddle*, (1869) LR 4 QB 455

(*v*) B of E Act, Sec 51 (n)

be given When the parties live in different places it is the time of despatch that is material, no matter when the notice reaches But when the parties live in the same place the time of despatch of the notice should be such that the notice reaches the party on the next day after the day of dishonour The distinction made between the two cases is due to obvious reasons Where the parties live in different places the time of reaching of the notice would depend on the distance and the nature of communication Therefore, in such cases it is the time of despatch that can be fixed and not the time of reaching of the notice which is dependant on uncertain factors There is something vague in the section When the parties live in different places, if the notice is not despatched by the next post but the other alternative time provided for in the first paragraph of the section e.g. the next day be availed of to despatch the notice, will it be sufficient to send the notice by the last post of the next day if there are more than one post on the same day? The point is not clearly stated But it is submitted that since the whole of the next day can be availed of, it will be a sufficient notice if it is sent by the last post But what will be the position if there be one post on the day of dishonour but none on the next day? Since the word used is 'despatched' it will, it is conceived, be a good notice if it is merely posted on the next day

**Exclusion of time**—If, however, the holder takes some time to ascertain the address of the person to whom the notice is to be sent the time spent therefor will be excluded from the time necessary for giving notice of dishonour (*w*) So also public holidays are to be excluded (*x*) Time is an element of utmost importance in regard to the sending of the notice of dishonour It must be given within a reasonable time after dishonour (*y*)

Notice may be given as soon as it is dishonoured (*z*) If it is given on the last day of grace, no right of action accrues until the following day The acceptor or the maker can make payment even after dishonour before the last day of grace expires (*a*)

**Post:**—If in the ordinary course of post the notice would reach its destination on the right day it is sufficient (*b*) Post

(*w*) *Firth v Thrush*, (1828) 8 B & C 387

(*x*) *Wright v Shaw Cross*, (1819) 2 B & Ald 501 (n)

(*y*) *Hirschfeld v Smith*, (1866) LRICP 340

(*z*) *Bahadur v Ghulab*, 11 Lah 34, (1929) Lah 577, 116 IC 887

(*a*) *Kennedy v Thomas*, (1847) 2 QB 759

(*b*) *Hilton v Fairclough*, (1811) 12 RR 766

marks are presumptive, but not conclusive, evidence of the date of posting (c)

**Hundis:**—In the absence of custom or local usage to the contrary the rule of notice of dishonour laid down in this section will apply to hundis. Prior to the passing of this Act the rule of notice of dishonour in case of hundis was not so strict under the Hindu Law Merchant. Reasonable notice and not immediate notice of dishonour was necessary (d). Reasonable time was determined by the custom of the locality. A delay of ten months (e), and a delay of 27 days (f) were not found unreasonable according to the respective custom of the localities.

**107.** A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## NOTES

We have seen that under the previous section a party must give notice of dishonour within a reasonable time *i.e.* on the next day after the day of dishonour. The same rule will apply to each of the parties to a negotiable instrument who seeks to bind his prior party by giving him notice of dishonour. That is to say, each party will have only one clear day to send a notice of dishonour to a prior party, whether immediate or not, sought to be made liable under the instrument. Each party will be bound to despatch his notice to every other party on the next day after the day he himself receives it. Thus, where a bill passed through, say, five persons all of whom lived in the same place and the bill was dishonoured, the holder gave notice on the same day to the fifth endorser who on the next day gave it to the fourth, and so the fourth to the third, and so on, the notices were good (g). But if the holder, in such a case, wanted to give notice to the first endorser direct he would have to do so on the next day after the day of dishonour and

(c) *Stocken v Collin*, (1841) 7 M & W 515

(d) *Megraj v Gokaldas*, 7 BHCR (OCJ) 127

(e) *Hari v Krishna*, 17 WR 442, *Anunt Ram v Nuthall*, 21 WR 62

(f) *Bahadur v Ghulub*, 11 Lah 34, (1929) Lah 577, 116 IC 887

(g) *Hilton v Shepherd*, (1796) 6 East 19 (n)



would not be able to extend the time of such notice by having as many days as there were endorsers (*h*)

The provisions of sections 93, 94, 105, 106, 107 show that the holder of a bill of exchange or hundi is bound to give notice of dishonour at the earliest opportunity to all the parties whom he desires to make liable thereon (*i*)

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## CHAPTER XI

### OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

**108.** When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto \* \* \* \*

### NOTES

The section has been enacted for saving the honour and credit of, and to prevent legal proceedings from being taken against, parties to the bill, who may be away from the place of dishonour by non-acceptance by the drawee. When for the default of the drawee in accepting a bill the parties thereto become liable to be proceeded with, a person, who is not a party to the bill, and, therefore, not liable on it, can step in and accept the bill for honour in place of the defaulting drawee with the consent of the holder (*j*). The result of an acceptance for honour will be that, under certain conditions, such an acceptor makes himself liable to all the parties subsequent to the party on whose behalf such acceptance is made (*k*). This section has no application to promissory notes and, therefore, if a person accepts such a note he does so

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(*h*) *Jagannath v Ramdas*, 25 I C 881

(*i*) (1914) P L R 243, (1914) P W R 104

(*j*) B of E Act, Sec 65(1)

(*k*) Sec 111 *post*

at his own risk and the maker of the note or any other party thereto does not make himself liable to him for reimbursement. This rule has not been extended to promissory notes by the Law Merchant as such notes are not made payable in a foreign country and the necessity of intervention like the one provided for here does not arise. In the case of bills there can be a series of such acceptances for honour but there cannot be an acceptance for honour of a part of the bill.

**Permission of Holder.**—It is only a stranger who can accept a bill for honour, but he must do so with the consent of the holder. Such consent is necessary for obvious reason. On dishonour the holder acquires an immediate right of recourse against all the prior parties and he can forthwith recover his money by suit. But in the case of acceptance for honour this right of the holder is waived and it will be manifestly unjust to allow such an important right of the holder to be curtailed without his consent. He is given an opportunity to consider whether, having regard to the financial position of the stranger, he would be satisfied with his acceptance and would forego his present right of recourse. It is possible that the stranger, willing to accept the bill for honour, is not a man of substance and has no credit but still on account of his acceptance the holder will have to wait for payment till maturity of the bill and meanwhile the drawer or any other indorser may become insolvent to the prejudice of the holder. To avoid all this the consent of the holder has been made a condition precedent to such an acceptance.

**Who can accept:**—It has been stated before that only a stranger, who has no present liability under the bill, can accept a bill for honour. A drawee of a bill who does not accept it when presented to him is a person who is not a party to the bill and is not liable under it. By non-acceptance he reduces himself to the position of a stranger and, therefore, can be an acceptor for honour. But if the drawee after refusal to accept promises to pay before noting and protest, he will not be an acceptor for honour because there cannot be an acceptor for honour before noting and protest.

**The Amendment:**—Not only noting or protesting and consent of the holder were formerly necessary for acceptance for honour but a notarial certificate of a declaration was also necessary stating that a third party would accept the dishonoured bill for the honour of some party. The second part of the section ran thus, "unless the person who intends to accept *supra* protest declares, in the presence of a notary, that he does it for honour and has such declaration duly

recorded in the notarial register at the time, his acceptance shall be a nullity" By the Amending Act II of 1885 this clause has been repealed

**109.** A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour \* \* \* \*

How acceptance for honour must be made

### NOTES

The words "by writing on the bill under his hand" have been substituted for the words "in the presence of a notary public subscribe the bill with his own hand and," and the words "and such declaration must be recorded by the notary in his register" which occurred after the words 'generally for honour' have been repealed by section 8 of the Amending Act II of 1885. The result of the amendments is that the person desiring to accept for honour need not now appear before a notary to make a declaration that he is accepting a bill for honour and to get it noted in the notarial register. The law as it stands at present requires the acceptor

(I) to write on the bill itself under his own hand

(II) that he accepts the protested bill for the honour of so and so or generally for honour

There is no form of such acceptance. If the formalities noted above are complied with, the acceptance is valid. Such acceptance may be written across the bill or on any part of the bill. 'Accepted *supra* protest,' or 'accepted S P,' or 'Accepted *supra* protest for the honour of A B for Rs —' are sufficient but in each case it must bear the signature of the acceptor (1)

**110.** Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer

Acceptance not specifying for whose honour it is made

### NOTES

When a bill is not accepted for the honour of any particular party but is accepted generally for honour as laid down in the

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(1) B of Ex Act, Sec 65(3)

previous section it will be presumed to have been accepted for the honour of the drawer (*m*)

**111.** An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity

### NOTES

This section deals with the rights and liabilities of the acceptor for honour. The acceptor for honour virtually places himself in the same position as the party for whose honour he accepts. He is liable to the holder and all parties subsequent to the party for whose honour he accepts. His liability is, however, a qualified one. The acceptance for honour is in its nature qualified and amounts only to a collateral engagement, that is, an undertaking to pay, if the original drawee, upon presentment for payment, should persist in dishonouring the bill (*n*). The liability of the acceptor for honour will arise if, (1) the bill is presented to the drawee for payment at its maturity, (ii) the drawee refuses payment and the bill is noted or protested for non-payment (*o*), (iii) and the bill is presented to acceptor for honour. If these conditions are not fulfilled an acceptor for honour will not be made liable.

**Rights:**—The acceptor for honour being a person who does not derive any personal advantage out of the bill but only goes to do some gratuitous good to the person for whose honour he accepts the bill it is only just and proper that he shall not

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(*m*) B of Ex Act, Sec 65(4)

(*n*) *Hoare v Cazenove*, (1812) 16 East, 391

(*o*) Sec 112 *post*

suffer eventually but shall be allowed to be reimbursed for any payment he has to make for such acceptance. He is, therefore, entitled to recover from the party for whose honour he accepts the bill and all parties prior to such party (*p*)

**Estoppel:—**The acceptor for honour being liable to all the parties subsequent to the one for whom he accepts, an estoppel which can be pleaded against such party can be pleaded against him also, or, in other words, he subjects himself to all the equities and liabilities to which the party for whose honour he accepts the bill was subjected to. Therefore, if he is an acceptor for honour for the drawer he cannot, like the drawer, plead that the payee is a fictitious person but can, as the drawer himself can, set up the plea that the signature of the drawer is not genuine (*q*)

**Presentment to acceptor for honour:—**We have seen that one of the conditions precedent to the liability of an acceptor for honour is that the bill should be presented to him for payment. The question that arises is 'when is such presentment to be made?' It is laid down in the second paragraph of this section that the instrument should be presented to the acceptor for honour not later than the next day following the day of dishonour, but when the address given by such acceptor is at a place different from the one where it is payable it will be sufficient to forward the bill for presentment on the day next after the day of maturity (*r*)

In case of acceptance for honour of a bill payable after sight its maturity is calculated from the date of acceptance for honour (*s*)

**112.** An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour

When acceptor for honour may be charged

## NOTES

An acceptor for honour can be made liable only when the bill has been presented to him after it has been presented for payment to the drawee and noted and protested for dishonour by

(*p*) Byles (17th Ed) p 217

(*q*) Indian Evidence Act, Sec 117 (Explanation 1)

(*r*) B of Ex Act, Sec 67(2)

(*s*) Sec 23 *ante*

non-payment Therefore, if the acceptor for honour pays the money before presentment to the drawee or before it is noted and protested for non-payment by the drawee, he cannot recover the amount so paid from the person for whose honour he has accepted it or from any party prior to such party (*t*) (See also the notes to section 111 *ante*)

**Presentment to drawee when essential:**—Whether presentment to the drawee for payment by him is or is not essential as a pre-requisite to an action against the acceptor for honour depends upon the nature of obligation of an acceptor for honour of the drawer or the indorser If an acceptance in terms be an engagement by the party giving it that he will pay the bill when it becomes due and entitles the holder to look to him in the first instance without a previous resort to any other person then no presentment to the drawee for payment is necessary But if the acceptance is in its nature qualified and amounts to a collateral engagement only it is an undertaking to pay if the original drawee upon presentment do not pay and in such a case a protest and presentment to the drawee will be an essential pre-requisite to an action against the acceptor for honour A second resort to the drawee for payment is necessary, for, effects often reach the drawee who has refused acceptance in the first instance out of which the bill may and would be satisfied if presented to him again when the period of payment has arrived And the drawer is entitled to the chance of benefit to arise from such second demand, or, at any rate, to the benefit of evidence that the demand has been duly made without effect (*u*) When the bill on presentment by the holder to the drawee for payment is dishonoured, a further noting or protest is necessary before the acceptor for honour can be made liable (*v*)

**113.** When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public

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(*t*) *Williams v Germaine*, (1827) 7 B & C 468

(*u*) *Hoare v Cazenove*, (1812) 16 East 391

(*v*) *Bhasyam and Adiga* p 494

## NOTES

This section provides for payment for honour and is an exception to the ordinary rule that a voluntary payment of debt of one by another is not enforceable in law, that is to say, when a person makes a voluntary payment of the debt of another he cannot recover the amount from the latter. In the case of some negotiable instruments, however, this ordinary rule of law does not apply and the person who makes such voluntary payment, that is, a payment for honour, can recover the amount from the person for whose honour the amount is paid and from all parties prior to him. This exceptional rule in favour of bills of exchange has been made in the interest of trade and commerce to enable friends and relations to save the prestige and credit of the drawers and indorsers in the mercantile world by making voluntary payments, after dishonour and noting or protest. This rule does not, however, apply to all negotiable instruments, *e.g.*, promissory notes which are not meant for circulation and, therefore, a person who makes a voluntary payment of a debt due on a promissory note may not recover it from the drawer or indorser. But according to Chalmers a promissory note is sometimes but very rarely paid *supra* protest (*w*). The section does not apply to a "drawee in case of need" in a bill of exchange (*w*<sup>1</sup>).

**Who can pay for honour:**—We have seen that under section 108 an acceptance for honour can be made only by a stranger, that is, one who is not a party to the instrument and has no existing liability under it. But unlike acceptance for honour, a payment for honour can be made by any person—a stranger as well as a party to the instrument having an existing liability under it. Thus, the drawee or any endorser may pay for honour but such payment does not, in fact, place him in a better position than he will be, if he makes the payment on his own behalf and not for honour. It would, therefore, seem that payment for honour by a party to the bill is almost a misnomer having had no practical advantage for it. On payment *supra* protest the bill ceases to be negotiable (*x*).

**Time for making payment for honour:**—As in the case of acceptance for honour so in the case of payment for honour there must be dishonour, *i.e.*, refusal to pay the bill. And after this dishonour the bill should be noted or protested for non-payment before any payment for honour of any party liable under

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(*w*) Chalmers (10th Ed) p 271

(*w*<sup>1</sup>) *S M Bholat v Yokohama Specie Bank*, 1941 Rang 270 197 IC 890

(*x*) *Re Overend Gurney & Co, Ex-parte Swan* (1868) LR 6 Eq 344

it can be legally made Any payment made before noting or protest will not be payment for honour and will be without the attendant rights of payment for honour

**How such payment to be made.**—Previous to the payment, the party making the payment or his agent (i) must appear and make a declaration before a notary public as to the party on whose behalf he is making the payment and (ii) such declaration by the party or his agent must be recorded by the notary public If either of the two formalities, *eg*, the declaration and the recording be not complied with, the payment will not be a payment for honour but a voluntary payment The words “or by his agent in that behalf” in this section have been inserted by section 9 of Amending Act II of 1885

**Holder bound to accept payment:**—Unlike an acceptance for honour, which requires the consent of the holder and which the holder may or may not allow, a payment for honour does not require any such consent The holder cannot refuse to accept any such payment for the simple reason that by such acceptance of payment his position cannot be prejudicially affected and the reasons which can be urged against an acceptance for honour without the holder’s consent cannot obviously exist here. If, therefore, a holder refuses to accept such payment he loses his right of recourse against the party who would be discharged by such payment (y) On payment the payer becomes entitled to the bill and the protest (z)

**Two or more offers for payment:**—When there are more than one person willing to make payments for honour of different parties the position admits of some difficulty There is no express provision in this Act as to what the holder should do. Under the English law, however, the holder is to accept the payment of the person who will discharge the largest number of persons liable under the bill (a) It is submitted that the same rule should be followed here

**114.** Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment

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(y) B of E Act, Sec 68(7)

(z) Ibid Sec 68(6)

(a) Ibid Sec 68(2)



## NOTES

The payer for honour acquires all the rights of the holder whom he pays and becomes entitled to all the remedies of such holder on the instrument. His position is the position of an endorsee although there is no endorsement. A person who takes up a bill *supra* protest for the benefit of a particular party to the bill, succeeds to the title of the person from whom, and not for whom he receives it and has all the title of that person to sue upon the bill, except that it discharges all the parties subsequent to the one for whose honour he takes it up, that is, he succeeds to both the rights and the duties of the holder as regards the party for whose honour he pays and all parties prior to him (*b*). He can, therefore, enforce his rights and remedies against the person for whose honour he pays and all parties prior to him. The payer steps into the shoes of the holder and is, therefore, subject to the same disabilities as the holder, that is, he cannot sue prior parties if they have not received notice of dishonour (*c*), nor can he recover anything if an endorsement turns out to be a forgery (*d*). He cannot recover the amount from the holder unless he gives notice of the mistake on the very day of payment.

**What a payer for honour can recover:**—The person making payment for honour can only recover the amount he has paid with interest thereon plus the incidental costs including the notarial charges. He cannot recover more than that or what is due on the bill. On making the payment he is entitled to the bill and the protest.

**115.** Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

## NOTES

The section deals with dishonour of bills by a drawee in case of need. A bill is said to be dishonoured by non-acceptance when the drawee makes default in acceptance after presentment to him (*e*). Presentment is essential where it is not excused. Therefore, dishonour of a bill by a drawee in case of need implies

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(*b*) *Re Overend Gurney & Co, Ex-parte Swan*, (1868) L R 6 Eq 344  
 (*c*) *Goodall v Polhill*, (1845) 14 L J C P 146  
 (*d*) Daniel Sec 1257  
 (*e*) Section 91 *ante*

that the bill has to be presented before him for acceptance. This section makes the presentment to the drawee in case of need obligatory on the holder and the non-presentment of the bill to him absolves the drawer from all liability (f). Such presentment is to be made within a reasonable time like presentment to an acceptor for honour.

**116.** A drawee in case of need may accept and pay the bill of exchange without previous protest.

Acceptance and pay-  
ment without protest

### NOTES

Previous protest is not necessary in case of acceptance and payment of a bill by a drawee in case of need. When a drawee in case of need pays the bill the drawer becomes liable to him for the full amount (g).

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## CHAPTER XII

### OF COMPENSATION

**117.** The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall \* \* \* \* be determined by the following rules —

Rules as to compensa-  
tion

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it,
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is

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(f) *Bahadur v Ghulub*, 11 Lah 34; (1929) Lah 577, 116 IC 887; *Johu v Karachwala & Co*, 1938 Bom 364 177 IC 484

(g) *Daniel*, Sec 111

entitled to receive such sum at the current rate of exchange between the two places,

- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment,
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places,
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

### NOTES

This section lays down the rules for determining the amount of compensation which the holder or an indorsee of a negotiable instrument may claim from a party liable on the same. Under this section what is realisable is not the debt but only compensation. This difference is noticeable. Thus, where the manager of a Hindu joint family incurred a debt for the benefit of the family and executed a pronote for the same which was endorsed by the payee to a third party without assigning the debt as well, the endorsee could sue on the pronote alone and not the debt and the decree obtained by him on the pronote against the maker

being one for compensation and not for the debt could not be executed against the other members of the family by invoking the principles of Hindu law (*g*<sup>1</sup>)

**Clause (a). Holder's amount:**—Clause (a) deals with the amount the holder is entitled to have. The holder is entitled to the amount due upon the instrument together with all the legitimate expenses incurred in presenting, noting and protesting it. It does not matter if the holder has paid a less amount for the instrument than what is due upon it (*h*). The amount due on the instrument means the principal amount plus interest at the rate specified in the instrument (*i*) or where no rate is specified at the rate of six per cent (*j*).

**Expenses:**—All the expenses properly incurred for making presentment for acceptance and for payment as well as the notarial and other charges incurred for noting and protesting it are recoverable from the person liable on the instrument. This section is wider than the corresponding section of the Bills of Exchange Act (*k*) under which a holder can recover expenses of protest only if such protest is necessary. Thus, under the English law an inland bill does not require protest for better security and any expenses incurred for the protest of such bills will not be chargeable against the person liable. There is, however, no such restriction under the Indian Law and, therefore, such expenses will be recoverable here. Expenses incurred for notice of dishonour to the drawer and to the endorsers or any loss which is not the result of non-payment of the bill are not recoverable (*l*). Commission allowed to an agent for collection of the bill is recoverable (*m*) but the section is silent on the point.

**Clause (b) Re. Exchange.**—Where a bill is drawn or indorsed and made payable in the same place, the question of any loss on this head, by dishonour, does not arise as the payment has to be made in the same currency. But when a bill is drawn or indorsed in one country and is payable in another, its dishonour will necessarily cause some loss owing to the difference in the currency between the countries and the measure of such loss is called Re-Exchange.

If the person liable on the instrument resides in a country different from the country where the bill is payable, the holder

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(*g*<sup>1</sup>) *Ramanathan v Nuthuraman*, 1942 Mad 161 201 I C 3

(*h*) *Reid v Furnival*, 5 C & P. 499

(*i*) Section 79 *ante*

(*j*) Sec 80 *ante*

(*k*) Sec 57(1) clause (c).

(*l*) *Woolsey v Crawford*, (1810) 2 Camp 445

(*m*) Chitty (11th Ed) p 441

is entitled to receive the sum at the current rate of exchange between the two countries. The holder is entitled in such a case to an amount due on the instrument in the currency of the country where it is payable and he should not suffer any loss on account of the difference in the rate of exchange between the two countries. If an ordinary bill of exchange is drawn in one country the holder, who has contracted for the transfer of funds from one country to the other, almost necessarily sustains damages by the dishonour of the bill. He must take other means to put himself in funds in the country where the bill was payable. Hence the right to re-exchange which is the measure of those damages (*n*)

The current rate of exchange may vary from day to day. The question that, therefore, arises is 'to current rate of what date is the holder entitled?' The date of dishonour, or the date of demand or the date of suit or judgment? Although the section is silent on this point it is now settled law that it should be the rate current on the day of dishonour (*o*) and the holder in such a case is entitled to receive from the drawer or the endorser the value at the rate of exchange on the day on which the bill was dishonoured (*p*). The rate of exchange can be fixed by special agreement by an instrument (*q*) but no oral agreement is admissible (*r*).

**Clause (c) Indorser's right to compensation:**—Under this clause an indorser who, having a subsisting liability under the instrument, has made payment of the same is entitled to recover the amount he has paid with interest at the rate of six per cent per annum from the date of payment until tender or realisation of the amount along with all costs caused by the dishonour and non-payment. An endorser who has no subsisting liability, as for instance, one who has been discharged from liability by the failure of the holder in giving him notice, or an indorser without consideration and not liable to the indorsee, making the payment is not entitled to recover the amount. A party, not liable under the instrument, can suffer no damage by dishonour and non-payment and, therefore, the question of compensation of such a party cannot arise.

An indorser can charge all the expenses incurred from his prior party but in the absence of any contract for indemnity or

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(*n*) *Williams v Ayers*, (1877) 3 AC 133

(*o*) *Muller v Ataulloh*, 51 Cal 320

(*p*) *Williams v Ayers*, (1877) 3 AC 133

(*q*) *Re Hodgeson & Co., etc Ltd*, (1920) WN 198

(*r*) *Cohn v Boulken*, (1920) 36 TLR 767

of a request by the prior party to defend the action by the holder against the indorser he is not entitled to the costs of the case (*s*)

**Clause (d) Indorser's Right to Re-Exchange:**—The indorser like the holder under clause (b) is entitled to re-exchange. The rules laid down in the section will apply to the drawer as well (*t*)

**Clause (e). Drawing bill for compensation:**—Under this clause the person who is entitled to compensation for dishonour as laid down in the previous clauses can draw a bill payable at sight or on demand, on any party who is liable to compensate him for the amount due to him, together with all the expenses properly incurred by him. The bill will also cover the difference of exchange between the two countries when the bill dishonoured was drawn in one country and made payable in another. A bill so drawn for the compensation money and incidental charges above referred to is called a "redraft." Such a bill must be accompanied by the instrument dishonoured and the protest if any, otherwise it will not be enforceable. The position of the newly drawn bill will be similar to that of the dishonoured bill in relation to the question of compensation. A dishonoured redraft may give rise to another on the same terms and conditions set forth above. An endorser who pays a redraft may, in like manner, draw a bill on an antecedent party, the bill being negotiated at the place where the dishonoured bill was payable (*u*)

For compensation payable by a banker for dishonouring a customer's cheque see section 31 *ante*

## CHAPTER XIII

### SPECIAL RULES OF EVIDENCE

**118.** Until the contrary is proved, the following presumptions shall be made —  
Presumptions as to negotiable instruments

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed,

(*s*) *Dawson v Morgan*, (1829) 9 B & C 618

(*t*) B of E Act, Sec 57

(*u*) *Mellish v Simeon*, (1794) 2 H Bl 378

negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) that every negotiable instrument bearing a date was made or drawn on as to date, such date,

(c) that every accepted bill of exchange as to time of acceptance, was accepted within a reasonable time after its date and before its maturity,

(d) that every transfer of a negotiable as to time of transfer, instrument was made before its maturity,

(e) that the indorsements appearing upon a as to order of indorsement, negotiable instrument were made in the order in which they appear thereon,

(f) that a lost promissory note, bill of exchange or cheque was duly as to stamp, stamped,

(g) that the holder of a negotiable instrument is a holder in due course <sup>that holder is a holder in due course</sup> Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him

## NOTES

This chapter lays down special rules of evidence applicable only to negotiable instruments and not to instruments which are

not negotiable (*v*) These special rules apply as between the parties to the instruments or those claiming under them (*v*<sup>1</sup>)

### Clause (a)—Presumption as to consideration—

This section which confers certain special privileges on a negotiable instrument is a relaxation of the ordinary rule of law under which the plaintiff has to prove what he alleges, the most important being consideration. The words 'for consideration' as used in this clause are quite general and not limited to consideration mentioned in the instrument (*v*<sup>2</sup>). An instrument without consideration is void and in order to enforce an instrument the plaintiff has, under the ordinary rule of law, not only to prove its execution but also the passing of consideration. Failure to prove the passing of consideration will lead to the dismissal of the case. A negotiable instrument which has been designed for facility of trade and commerce would fail of its effect if during its currency every holder is suing on it were to prove the passing of consideration from the start in order to get a decree as no body would, in such a state of uncertainty, go to have recourse to it. The result would be that trade and commerce would suffer.

To obviate this difficulty it has been laid down that every negotiable instrument must be presumed to be honest at its inception and to have been made drawn, accepted or indorsed for consideration. These provisions of the section are imperative and the court is bound to draw the initial presumption that the consideration has passed if the execution of the instrument is admitted or proved (*w*) and the onus lies on the defendant to prove that there was no consideration (*x*). The view that where the defendant pleads that his signature was taken in a blank paper must mean a denial of execution throwing the onus of proving the passing of consideration on the plaintiff (*x*<sup>1</sup>) appears to militate against the accepted principle to prove that the document

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- (*v*) *Barkatullah v Mahamad*, 1925 Lah 272, 6 Lah LJ 542, 84 IC 866, *Hiralal v Rajkumar*, 12 CLJ 470, 8 IC 796, *Brij v Ram*, 13 Pat LT 506, 1932 Pat 324, *Venkataram v Vallu Akkal*, 58 Mad 693, 68 MLJ 81, 1935 Mad 181, 1935 MWN 1, 153 IC 944
  - (*v*<sup>1</sup>) *Anumoleer v Ghattaraju*, 1937 Mad 182, 167 IC 819
  - (*v*<sup>2</sup>) *Raman v Surjya*, 1943 Cal 22, 46 CWN 340, 75 CLJ 404, 204 IC 259
  - (*w*) *Rishikesh v Brymohon*, 1941 OWN 613, 193 IC 863, *J K Shaha v Dulah*, 1939 Rang 334, 183 IC 615, *Girwarlal v Dandayal*, 1935 All 509, 1935 ALJ 833, 158 IC 197, *Raghunath v Nanghuttu*, 1941 AWR 332, 196 IC 725, *Numeyer v E M Mamooji*, 1938 Rang 461, 180 IC 519, *Mahabir v Ali*, 1938 Pat 612, 197 IC 350, *Chochalingam v Subramania*, 1940 Rang 170 189 IC 715
  - (*x*) *Ibid*, *Kedar v Radha*, 61 CLJ 17
  - (*x*<sup>1</sup>) *Mrja Gargoni v Bhola*, 1934 Lah 293, 151 IC 60



is, not what it purports to be ( $x^2$ ) All bona fide holders and all intermediate parties can avail themselves of this presumption ( $x^3$ ). A holder is not bound to establish that he has given any value for the note until the other side has established the want or failure or illegality of the consideration or that the note had been lost or stolen before it came into the possession of the holder ( $y$ ) The burden of asserting and proving that consideration did not pass lies on the defendant ( $z$ )

Failure on the part of the defendant to prove want of consideration entitles the plaintiff to a decree on account of the presumption of the passing of consideration raised by this section This presumption is a statutory presumption in case of negotiable instruments only ( $a$ ) and does not apply to non-negotiable instruments ( $b$ ) The result of this presumption may be that persons who have not paid any consideration may at times be entitled to a decree But still the rule has worked well in the interest of the mercantile community and the onus rightly lies on the person who promises to pay on the instrument ( $c$ ) The presumption arises against the debtor personally but not against a creditor or a receiver in an insolvency proceeding ( $d$ ) Nor does any presumption of consideration arise in a criminal trial In a charge for perjury the prosecution must prove that the promisor was executed for consideration and that the accused falsely stated that it was not for consideration ( $e$ ) The section does not raise any presumption that the consideration was advanced for legal necessity which must be proved by the person suing on the note ( $f$ ) Nor does it raise a presumption as to the *quantum* of consideration ( $g$ )

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- ( $x^2$ ) *J K Shaha v Dulah*, 1939 Rang 334, 183 IC 615, *Raghunath v Nanghuttu*, 1941 AWR 332, 196 IC 725, *Jagomohon v Mendhar*, 54 All 375, 1932 All 164, 131 IC 241
- ( $x^3$ ) *Anumaly v Ghattaraju*, 1937 Mad 182, 167 IC 814
- ( $y$ ) Story on Promotes, see, 196
- ( $z$ ) *Kedar v Radha*, 61 CLJ 17, *Gurwarlal v Dandayal*, 1935 All 509; 1935 ALJ 833, 158 IC 197; *Abdul v Abdul*, 1937 Oudh 155, *Zohrajan v Rajan*, 5 Lah LJ 198, 62 PWR 1915, 48 PR 1915; 28 IC 402, *Madho v Nandu*, 1 Lah 429, 58 IC 982; *Raghunath v Nanghuttu*, 1941 AWR 332, 196 IC 725
- ( $a$ ) *Hansraj v Lachmi*, 1923 Lah 388
- ( $b$ ) *Barkatullah v Mahamad*, 1925 Lah 272, 6 Lah LJ 542, 84 IC 866; *Hiralal v Rajkumar*, 12 CLJ 470, 8 IC 796, *Brij v Ram*, 13 Pat L J 506, 1932 Pat 324, *Venkataram v Valli Akkal*, 58 Mad 693, 68 MLJ 81, 1935 Mad 181, 1935 MWN 1, 153 IC 944
- ( $c$ ) *Hindusthan Assurance Ltd v Gurdit*, (1924) Lah 462, 6 Lah LJ 183, 80 IC 741, *Kishen Chund v Jamnadas*, 5 IC 891, 24 PLR 1910, 25 PWR 1910
- ( $d$ ) *Ram v Kashi*, (1928) All 380, 26 ALJ 241, 108 IC 147
- ( $e$ ) *Shaukat v Emperor*, 18 ALJ 1151, 59 IC 198
- ( $f$ ) *Sriram v Mohanlal*, 31 NLR 243, 155 IC 607
- ( $g$ ) *Mallavaraju v Boggavaraju*, 58 Mad 841

**When the Burden of proof shifts to plaintiff:**—The presumption that arises under this section is from its very nature not conclusive but is rebuttable (*h*) and the onus shifts to the plaintiff under various circumstances (*h*<sup>1</sup>) but it does not shift because part of the consideration is shewn not to have been paid in cash as stated in the note (*i*). When the parties go to trial on the issue of want of consideration the presumption has no value if the evidence adduced before the court on this issue is against the plaintiff (*j*). If the pronote mentions one kind of consideration and it is found in evidence that the consideration was of a different nature, the suit is not liable to be dismissed for that reason (*j*<sup>1</sup>).

**Fraud or Illegality:**—Under clause (g) there is a presumption in favour of a holder that he is a holder in due course i.e. he has given valuable consideration and the burden to prove the contrary is on the defendant (*j*<sup>2</sup>). But under the proviso to the clause the initial presumption is rebutted and the burden is shifted to the plaintiff to prove that he is a holder in due course when the defendant establishes that a negotiable instrument was obtained from its maker or holder by means of an offence or fraud or for unlawful consideration or that the acceptance was a forgery (*k*). Where from the respective position of the parties—as attorney and client—there are suspicious circumstances in the transaction raising a presumption of undue influence or fraud the burden of proving consideration shifts to the plaintiff (*l*). When the consideration of three notes executed in quick succession by a young man owning considerable property, but not in possession of the same at the time of execution of the notes, was alleged to be partly immoral and partly absent the onus to prove the passing of consideration lay on the plaintiff (*m*). The ordinary rule that a negotiable instrument has been executed for value is so much weakened by the allegation of the defendant a young man of extravagant habits just emerged from minority that he has not received the full consideration as is sufficient to shift the burden of proof and throw upon the money lender the obliga-

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- (*h*) *Bolaque v Abdul*, (1923) Lah 638; 75 IC 950  
 (*h*<sup>1</sup>) *Kadher v Sheonaram*, 1943 All 90 205 IC 299  
 (*i*) *Balkishan v Rambakdas*, 1930 Nag 187, 122 IC 383  
 (*j*) In re, *Kanuswan Pillai*, 9 IC 79, 8 MLT 463  
 (*j*<sup>1</sup>) *Brahmadeo v Karising*, (1936) Pat 498, 165 IC 809  
 (*j*<sup>2</sup>) *Chochalingam v Subramania*, 1940 Rang 170 189 IC 715  
 (*k*) *Nasirah v Kherchand*, 36 IC 996, *P C Das v Rangaswami*, (1927) Rang 188; 103 IC 133  
 (*l*) *Brojendra v Lachmi*, 6 CWN 816, 29 Cal 595  
 (*m*) *Sundarammal v Subramania*, 29 MLJ 236, 30 IC 971; *Sami v Parathasarathi*, 31 IC 739 (Mad), *Kadher v Sheonaram*, 1943 All 90 205 IC 299

tion of satisfying the court that he paid the consideration in full (*n*) Where the statement of the plaintiff differs from the statement in the note itself as to consideration the onus lies on the plaintiff to prove that the note was executed for full consideration (*o*) Similar will be the position if the statement of the agent of the plaintiff is inconsistent with the recital in the note regarding consideration (*p*) In a case where the plaintiff gives evidence to show that he has paid some consideration but cannot exactly say how much has been paid the question of presumption does not arise and the plaintiff is not entitled to a decree for the full amount (*q*) He is entitled to recover only what he paid (*q*<sup>1</sup>)

If the plaintiff states that a part of the consideration was paid in cash and the rest in some other way but fails to prove payment of the latter part, his claim must fail to the extent of the amount covered by the latter part (*r*) This does not in any way encroach upon the general rule of law that the defendant must plead and prove absence of consideration (*s*) Where in a suit on a note the defendant denied execution but did not plead absence of consideration, the execution having been proved by the plaintiff he became entitled to a decree as the defendant could not be permitted to raise or prove absence of consideration (*t*) When the recital of consideration in a pronote is false the burden of proving the consideration lies on the holder against the maker and more so against third parties (*u*) But the plaintiff can always prove that the consideration recited in the note is not the true one but that it was executed for a different consideration (*v*) Consideration is not restricted to cash money alone (*w*) Where a pronote was obtained for unlawful consideration

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- (*n*) *Moti v Mahamad*, 20 Bom 367, *Barkat v Mahamad*, 1925 Lah 272, 6 LLJ 542, 84 IC 866, *Ram v Jafar*, 5 OC 307, *Miran v Mahamad*, 2 PR 1902, *Kadher v Sheonaram*, 1943 All 90 205 IC 299
- (*o*) *Zohra v Rajan*, 5 LLJ 198, 48 PR 1915, 62 PWR 1915, 28 IC 402
- (*p*) *Sirajuddin v Ghampo*, 3 Lah LJ 439, 1921 Lah 148, 68 IC 443
- (*q*) *Kishen v Ghura Mal*, 13 ALJ 322, 28 IC 390
- (*q*<sup>1</sup>) *Sambhu v Lallu*, 1924 All 256, 80 IC 717
- (*r*) *Ibid*, *Sundar v Kushi*, 1927 Lah 864, 28 PLR 295, 9 LLJ 254; 102 IC 42
- (*s*) *Mahamad v Mahamad*, 1923 All 214, 67 IC 684
- (*t*) *Maung Me v Ma Sein* 2 IC 539, 5 LBR 46, (but see, *Nundas v Dalua*, 1933 Oudh 394)
- (*u*) *Palaniappa v Rajagopala*, 1928 Mad 773, 1928 MWN 425, 111 IC 407
- (*v*) *Ganapati v Munisami*, 5 IC 754, 7 MLJ 81; 33 Mad 159, *Brahmadeo v Karising*, 1936 Pat 498, 165 IC 809
- (*w*) *Kedar v Radha*, 61 CLJ 17

the onus lay on the holder to prove that he was a holder in due course and for consideration (x) When the holder has no sufficient cause to believe that there was any defect in the title of the indorser, he is a holder in due course and the presumption of this section will be in his favour (y) Where an endorsee of a note payable on demand had no knowledge of discharge of the note or of any demand not having been made at the time of endorsement he must be deemed to be a holder in due course although the endorsement was after discharge (y<sup>1</sup>)

To promissory notes which are not negotiable the presumption of this section does not apply Therefore, when in a suit based on such a note the defendant denies the passing of consideration the plaintiff must prove payment of consideration to get a decree (z) The presumption applies to Government promissory notes and other negotiable securities (a) When the execution is denied and the plaintiff has to prove the execution of the instrument a high standard of evidence is necessary (b) But in such cases has execution alone to be proved or has passing of consideration also to be proved? According to one view both have to be proved (c) and according to another only execution has to be proved (d) The latter view seems to be more reasonable

**Clause (b) Presumption as to Date:**—When a note which is genuine bears a date and a place the presumption is that it was made or drawn on the date as also at the place mentioned in the instrument and the person alleging a different date and place must prove them (e) Similar presumption will arise for the date of the endorsement When there are several endorsements each endorsee will be deemed to have been the holder in the order of endorsements on the instrument But this presumption may be rebutted by shewing that successive endorsers of a note were amongst themselves co-sureties or that the endorsements were in an order different from what appeared on the instrument (f) If a promissory note is ante-dated no presumption arises that it was executed on the date it bears on its face nor does a presumption arise if the document is found to be false (g)

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- (x) *Ramdas v Lalchand*, 1927 Lah 137, 28 P L R 68, 107 IC 325
  - (y) *Kishan v Sassaram Ltd*, 1924 Pat 521, 2 Pat LR 54, 101 IC 572
  - (y<sup>1</sup>) *Venkata v Kanaka*, 1936 Mad 879, 165 IC 432
  - (z) *Barkatulla v Mahamad*, 1925 Lah 272, 6 LLJ 542, 84 IC 866
  - (a) *Harilal v Rajkumar*, 12 CLJ 470, 8 IC 796
  - (b) *Bishambar v Ismile*, 1933 Lah 1029
  - (c) *Nanda v Dahua*, 1933 Oudh 394
  - (d) *Maung Me v Me Sem*, 2 IC 539, *Kedar v Radha*, 61 CLJ 17
  - (e) *Kirmany v Aga Ali*, 1928 Mad 919; 109 IC 170
  - (f) *Kothandaramaswami v Muthiah Chetty*, 45 IC 186
  - (g) *Raghunathachari v Aravatnathu*, 34 IC 617

**Clause (c) Presumption as to time of acceptance:**—A bill of exchange is *prima facie* deemed to have been accepted before maturity and within a reasonable time after its date which means after its issue. The presumption under this section does not extend to the exact date of its acceptance if the acceptance does not bear a date. Similarly, without a date of acceptance, the presumption will be that it has been accepted after the date of drawing and not on the date of drawing (*h*) and if it bears a date it will be presumed to have been made on that day (*i*). The section applies when the acceptance bears no date. But when the acceptance bears a date evidence is admissible to rebut the presumption and prove that it was accepted on a different date (*j*). Antedating or postdating a bill does not by itself make it invalid (*k*).

**Clause (d). As to time of transfer:**—Every endorsement will be presumed to have been made before maturity, provided the endorsement does not bear a date after maturity of the bill (*l*). There can be no presumption as to the exact date of the endorsement when there is no date (*m*). Circumstantial evidence may be given to rebut the presumption (*n*). This presumption may be rebutted even by slight suspicion (*o*).

**Clause (e). As to endorsements:**—In the absence of direct evidence that the endorsements on a negotiable instrument were made in a particular order the statutory presumption under this clause that they were made in the order in which they appear in the instrument will prevail (*p*).

**Clause (f). As to stamp:**—In the cases of instruments lost or destroyed the presumption is that they were duly stamped (*q*) and that the stamp was duly cancelled (*r*).

**Clause (g). As to holder in due course:**—‘Holder’ of a negotiable instrument has been defined in section 8 and ‘holder in due course’ in section 9 *ante*. Under the present clause every

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- (*h*) *Begbie v Levi*, (1830) 1 Cr & J 180
  - (*i*) *Glossop v Jacob*, (1815) 4 Camp 227
  - (*j*) *Kurmany v Aga Ah*, 1928 Mad 919, 109 IC 170
  - (*k*) *Nalaya v Palam*, 1926 MWN 726
  - (*l*) *Parkin v Moon*, (1836) 7 C & P 408
  - (*m*) *Sankarah v Mengalasheri*, 33 Mad 34, 19 MLJ 509, 6 MLT 237, 3 IC 428
  - (*n*) *Singar v Baldeo*, 1930 All 568, *Jawaharlal v Monmalal*, 1930 Oudh. 108
  - (*o*) Daniel Sec 783
  - (*p*) *Kothandaramaswami v Muthiah Chetty*, 45 IC 186
  - (*q*) *Rokriabi v Haji Abdul*, 1932 MWN 432
  - (*r*) *Ataram v Notandas*, 1930 Sind 4, 126 IC 741, *Pessumal v Gergaon*, 1921 Sind 72

holder will be presumed to be a holder in due course, that is to say, he will be presumed to have paid the consideration for it (*s*) and to have taken the instrument in good faith (*t*) until the contrary is proved and will be unaffected by the failure of consideration as between the drawer and the payee (*u*) The onus of proving that a particular transferee is not a holder in due course is on the party challenging it (*v*) Thus, where a drawer drew a post-dated cheque in favour of payee but no consideration passed from the payee to the drawer and the payee sold the cheque to a third person for actual consideration and there was no evidence to shew that the purchaser was not a bona fide endorsee and no guilty knowledge of the defect in the title of the payee had been brought home to the purchaser and the purchaser sued for recovery of his money on the cheque as a holder in due course it was held that the fact that no consideration passed between the drawer and the payee would not affect the right of the purchaser to recover the amount nor could it be argued that burden of proving that the holder of the cheque was a holder in due course lay upon the purchaser (*v*<sup>1</sup>) But the court has to decide, after giving due weight to this presumption, in each particular case, from the facts and circumstances placed before it, whether as a matter of fact the holder is a holder in due course To come to a decision on this point the court will have to take into consideration the probabilities of the case, the respective position of the parties, and the other attendant circumstances as direct evidence is not usually available (*w*) Thus, when a cheque was endorsed in favour of a book maker in a betting transaction by a person with whom he had such previous transaction the presumption of being the holder in due course was rebutted and the holder was required to prove both consideration and good faith (*x*) Once it is shewn that the instrument was obtained from its lawful owner or from any person in lawful custody thereof by means of an offence

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- (*s*) *Sundar v Khushi*, 1927 Lah 864, 28 PLR 295, 9 LLJ 254, 102 IC 42
- (*t*) *D N Saha v Bengal National Bank*, 47 Cal 861, 33 CLJ 541, 60 IC 940
- (*u*) *Sakharam v Gulubchand*, 16 Bom LR 743, *Kistan v Sassaram Ltd*, 2 Pat LR 54, 1924 Pat 521, 80 IC 572, *Hindusthan Assurance Ltd v Gurdit*, 6 LLJ 183, 1924 Lah 462, 80 IC 741
- (*v*) *Hindusthan Assurance Ltd v Gurdit*, 6 LLJ 183, 1924 Lah 462, 80 IC 741, *Royal Bank v Rahim*, 49 Bom 270, 27 Bom LR 506, 1925 Bom 369, 87 IC 982
- (*v*<sup>1</sup>) *Abdul v Abdul*, 1937 Oudh 155
- (*w*) *Ramaswami v Gurupathi*, 24 IC 709; 1 LW 100, *Raza Ali v. Rahat Hossain*, 1933 All 754
- (*x*) *Stewart v Mercado*, 1 Bur L J 40

or fraud or in breach of an agreement (y), or was obtained from the maker or acceptor by such means the onus of proving that the holder is a holder in due course is shifted on the holder and he must prove that he is a holder in due course (z), that is, he must prove that he paid the consideration and became a holder before maturity without having sufficient reason to believe that there was any defect in the title of the transferor (a). When the facts specified in this clause are proved the case will form an exception to clause (a) which states consideration may be presumed (b). Where a bill of exchange is on the face of it a good bill and there is nothing on the face of it to shew the contrary it prima facie imports value. Prima facie, a bill of exchange is a good bill of exchange and it is necessary to shew the contrary. When it is shewn that a bill of exchange was a fraudulent one or an illegal one or a stolen one, in any of those cases, it being known that the person who holds it was a party to that fraud, to that illegality or to that theft and, therefore, could not sue upon it himself, the presumption is so strong that he would part with it to some body who could sue for him that it shifts the burden (c). As has been already stated the onus shifts only when the defendant proves fraud or illegality in the first instance (d). Therefore, a mere denial of the passing of consideration between the original parties does not shift the onus and the defendant is bound to establish it. Where a bill is accepted for accommodation the ordinary presumption of the holder being a holder in due course will apply (e). The doctrine of *caveat emptor* applies to sale of negotiable instruments (f).

**Other Presumptions:—**Besides the presumptions noted above there are other presumptions generally applied in the case of negotiable instruments *e.g.* a bill will be presumed to be an inland bill unless the contrary appears on the face of it (g). A valid delivery will be presumed by all prior parties when a bill is in the hand of a holder in due course. This presumption is conclusive. Again, when a bill is not in the hands of the party who has signed it as drawer or acceptor or indorser a

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- (y) *Raza Ali v Rahat Hossain*, 1933 All 754
  - (z) *Doulatram v Nogindas*, 15 Bom LR 333, 19 IC 789, *Banku v. Secretary of State*, 36 Cal 239, 1 IC 929, *Kurundahammal v Kunhi Kanau*, 1930 Mad 141, 123 IC 596
  - (a) *Ramanadhan v Gundu*, 1928 Mad 1238, 1928 MWN 680, 113 IC 456
  - (b) *Ramdas v Lalchand*, 1927 Lah 137, 28 PLR 68, 107 IC 325
  - (c) *Jones v Gordon*, (1877) LR 2 AC 616
  - (d) *Ramdas v Lalchand*, 1927 Lah 137, 28 Punj LR 68; 107 IC 325.
  - (e) *Fitch v Jones* (1855) 5 E & B 238
  - (f) *Krishna v Tarachand*, 29 IC 877
  - (g) B of E Act Sec 4 (2)

valid and unconditional delivery by him is presumed until the contrary is proved (*h*)

**119.** In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved

Presumption on proof  
of protest

#### NOTES

It has been noticed before that a protest is a certificate drawn up by an officer appointed by the Government in the course of official business. Therefore, there is a presumption of correctness about the statement made therein, that is, it is presumed that whatever is stated in the certificate is correct. Unless the protest is a proper one fulfilling the conditions of sections 99 to 101 *ante* there is no presumption of correctness in its favour. In case there is a proper protest and such protest is proved, the court shall presume that the instrument was duly presented for acceptance or payment and that it was not accepted or paid. A court is entitled to presume dishonour if there is a proper protest but not if there is merely an entry 'noted for non-payment' without date of dishonour or certificate of protest (*i*). Protest operates as prima facie evidence of dishonour and can be rebutted by the other side. It is no evidence of notice or any other collateral fact such as the drawee had no fund of the drawer. Noting in itself is no evidence of presentment or dishonour (*j*).

**120.** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn

Estoppel against deny-  
ing original validity of  
instrument

#### NOTES

This section applies the doctrine of estoppel against the maker of a note, drawer of a bill of exchange, or cheque and

(*h*) *Ibid*, Sec 21 (*2*)

(*i*) *Veerappa v Vellayan*, 1910 MWN 780, 10 LW 39, 52 IC 370

(*j*) *Bombay City Bank v Moonjee*, PC 274



against the acceptor of a bill for honour of the drawer from denying the validity of the instrument as originally made or drawn. The conditions precedent to the application of this section are that there must be a properly stamped bill of exchange before the court, at which the court is entitled to look (*k*) and that the person suing must shew that he is a holder in due course (*l*). On account of the contract the maker, drawer or the acceptor is estopped from denying the validity of the original instrument in a suit by the holder in due course (*l*<sup>1</sup>). This statutory estoppel is limited to the question of validity of the original instrument and does not extend to the question of making or drawing or acceptance of the instrument (*l*<sup>2</sup>). He is at liberty to deny the one or the other as the case may be. He may also plead forgery of his signature (*m*) or may set up that the conditions precedent have not been fulfilled (*n*). When a person endorses a bill he is estopped from denying to a holder in due course the existence of the payee and his capacity to endorse (*o*). An endorser of a bill is estopped as against the endorsee from setting up the invalidity of the instrument (*p*). But as the payee of a promissory note payable to bearer which is an illegal instrument is not a holder in due course (*q*) the maker of such a note is not estopped from questioning the validity of the instrument against such a payee (*r*).

**Acceptor:**—Although the section mentions only the acceptor for honour of the drawer the rule of estoppel is equally applicable to the ordinary acceptor under section 117 of the Evidence Act. All the estoppels that bind the drawer operate against the acceptor for honour. An acceptor cannot deny the existence of the drawer.

**Minor:**—Since under section 26 *ante* a minor may draw, indorse, deliver and negotiate an instrument to bind all parties

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- (*k*) *Choteylal v Girraj*, 48 All 332, 1926 All 359, 93 IC 63
  - (*l*) *Raza Ali v Rahat*, 1933 All 754
  - (*l*<sup>1</sup>) *Shahabuddin v Venkata*, 1938 Mad 911
  - (*l*<sup>2</sup>) *Kuruppa v Narainswami*, 1942 Mad 169 201 IC 117
  - (*m*) Indian Evidence Act, Sec 117
  - (*n*) *Bachan Singh v Dharamarth Bank*, 1933 Lah 456 143 IC 348
  - (*o*) B of E Act, Sec 56 (b)
  - (*p*) *Arunachalam v Narayana*, 42 Mad 470, 37 MLJ 301, 1919 MWN 188; 9 LW 438, 51 IC 300
  - (*q*) *Merja Hidayet v Nago Kyamg*, 24 IC 721; 11 UBR 13
  - (*r*) *Chidambaram v Ayyaswami*, 40 Mad 585, 31 MLJ 401, 20 MLT 350; 1916 MWN 210, 36 IC 741, *Mian Buksh v Mt Bodhya*, 50 All 839, 1928 All 371, 26 ALJ 729, 115 IC 630 (FB), *Pethu v Chidambaram*, 1931 MWN 390, 131 IC 1, 1931 Mad 533.

except himself, an acceptor cannot set up the plea of minority and consequential invalidity of such an instrument (s)

**121.** No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same

Estoppel against denying capacity of payee to indorse

### NOTES

The words 'to order' have been substituted for the words 'to or to the order of, a specified person' by section 5 of the Negotiable Instrument (Amendment) Act VIII of 1919

This section deals with estoppels against denying the capacity of the payee of a promote or a bill of exchange payable to order, to endorse the same. The maker of a note undertakes to make payment to the payee or to his order, that is to say, he admits the capacity of the payee to receive the payment or to make an order for payment of the amount due on the instrument, to some other by an endorsement. Having, therefore, once admitted the payee's capacity to receive or to make order for payment and allowed others to deal with him on that footing, it would be manifestly unjust to a holder in due course if the maker were allowed to resist the claim of the former on the plea that the payee had not the capacity to endorse the instrument on the date of the note as he was a minor or insane or that he had no legal existence. Nor can the maker urge against the holder in due course that the payee was an insolvent and, therefore, had no capacity to make the endorsement (t). In the same way the acceptor of a bill by his endorsement admits that the payee is entitled to receive payment or order the making of the payment to some one else by his endorsement on the bill (u). He cannot plead against the holder in due course that the payee was not competent, on the date of the bill, to endorse as he was an infant (v) or that the payee was a married woman incompetent to enter into a valid contract (w).

**Time of estoppel:**—These estoppels arise in relation to

(s) *Chengalraya v Namappa*, 117 I C 133

(t) *Drayton v. Dale*, (1823) 2 B & C 293

(u) B of E Act, Sec 55 (2)

(v) *Jones v Darch*, (1817) 4 Price 300

(w) *Smith v Marsack*, (1846) 6 CB 486

the capacity of the payee on the date of the instrument. The case will be different if the insolvency or insanity happens after the making of the note or the acceptance of the bill. An indorsement by such persons being a nullity can confer no title to the endorsee and, therefore, the acceptor will not be justified in making payment to an endorsee with such a defective title (*x*). These estoppels do not extend to the genuineness of the indorsement of the payee or the authority of the agent to indorse. This must be proved by the plaintiff (*y*). Nor do they relate to the question as to who is entitled to sue on the instrument and may be the creditor (*y*<sup>1</sup>).

**122.** No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument

### NOTES

An indorser of the bill, by his endorsement, guarantees that all previous endorsements are genuine and that all prior parties had capacity to enter into valid contracts.

A bona fide holder for value can, therefore, maintain an action against all parties prior to him and none of them can be heard to say that it was a forged instrument although the document was tainted by the forgery of the endorsement prior to his own (*z*). The section is confined to the signature and capacity to contract of the prior parties. It is, therefore, no bar to such a party to plead that the instrument is illegal or invalid as, for instance, when a note or hundi is made payable to bearer offending against section 26 of the Paper Currency Act. The reason is that it is well established that there can be no estoppel against a clear injunction of a statute (*a*). An *obiter* in an earlier case (*b*) has been dissented from.

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(*x*) *Alock v Alock*, (1841) 3 M & Gr 268

(*y*) *Robinson v Yarrow*, (1817) 7 Taunt 455

(*y*<sup>1</sup>) *Varadarajam v Krishnamurthi*, 1941 Mad 321 195 I C 776

(*z*) *Bishen v Rajendra*, 5 All 302, 1883 A W N 50

(*a*) *Alagappa v Alagappa*, 44 Mad 187; 39 M L J 573, 1921 Mad 382, 60 I C 130

(*b*) *Arunachalam v Narayanan*, 42 Mad 470, 36 M L J 301, 1919 M W N 188, 9 L W 438; 51 I C 300

## CHAPTER XIV

### OF CROSSED CHEQUES

**123.** Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words “not negotiable,” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally

Cheque crossed  
generally

#### NOTES

This section is a verbatim reproduction from the English Crossed Cheque Act of 1876, since repealed and incorporated into the Bills of Exchange Act (c)

Ordinary cheques, that is, cheques which are not crossed, whether payable to bearer or to order, are, when presented to a bank, paid across the counter. They are liable to risks of loss or of being stolen in course of circulation and the finder may present it to a bank and may get payment over the counter, in case of a cheque payable to order, by forging the signature of the payee or indorsee, as the case may be, if meanwhile payment has not been stopped by the drawer by a countermand order. The bank making the payment, in the absence of any countermand order, will get absolute discharge while the true owner can only proceed for compensation against the finder or the thief. In order to safeguard the interest of all persons concerned against such loss and theft the system of crossing of cheques has been introduced. This practice originated at the clearing house when the clerks of different bankers who did business there used to write across the cheques, the names of their employers, so as to enable the clearing house clerks to make up the account (d)

**Object:**—The object of crossing a cheque is to give a direction to the banker not to make the payment over the counter but to pay it to a banker only (e) who may be the drawee banker

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(c) Sections 76 to 82

(d) *Bellamy v Marjoribanks*, (1852) 7 Ex 389

(e) *Ibid*

or a different one. The obvious advantage of this system of payment through a banker is that it may be easily found out to whose use the amount goes. It is thus a good protection against any mischief arising out of the loss or theft of the cheque.

**Crossing:**—Crossing may be either general or special. General crossing is dealt with in this section while special crossing is treated in the next. A cheque would be deemed to have been crossed generally if there are two parallel transverse lines drawn across its face with or without the words 'and company' or any abbreviation thereof (& Co) between the lines. The words 'not negotiable' may or may not be added. It would thus appear that the two parallel transverse lines across the face of the cheque are of the essence of general crossing—the use of words 'and Company' or 'not negotiable' being left to the option of the drawer or indorser.

A crossed cheque whether payable to bearer or to order is negotiable as uncrossed cheques by delivery or by indorsement and delivery. Crossing does not bar negotiability (f) unless the right of transfer is expressly taken away by the addition of the words 'not negotiable' to the crossing.

**124.** Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Cheque crossed  
specially

## NOTES

This section deals with special crossing of a cheque. When a cheque bears across its face the name of the banker with or without the addition of the words 'not negotiable' the crossing is special. When a cheque is specially crossed payment can be made only through the banker so specified and through none other so that the holder must have an account at that bank or negotiate the cheque to a person who has such an account. It would appear that in the case of special crossing the two parallel transverse lines which are essential to general crossing are not necessary. The name of the banker is essential, the words 'not negotiable' may or may not be added.

(f) *National Bank v Silke*, (1891) 1 Q B 435, *Underwood v Bank of Liverpool*, (1924) 1 K B 775

In India no other instrument except a cheque can be crossed  
For specimens of general and special crossings vide  
appendix I

**125.** Where a cheque is uncrossed, the holder  
Crossing after issue may cross it generally or specially.

Where a cheque is crossed generally, the holder  
may cross it specially

Where a cheque is crossed generally or specially,  
the holder may add the words "not negotiable"

Where a cheque is crossed specially, the banker to  
whom it is crossed may again cross it specially to another  
banker, his agent, for collection

## NOTES

This section deals with crossing a cheque by the holder  
after its issue by the drawer. The words 'where a cheque is  
uncrossed' mean where it is not crossed by the drawer (g) at the  
time of its issue. It, therefore, follows that the drawer of a  
cheque can cross it generally or specially at the time of its issue  
although there is no specific provision in the Act to this effect.

Any holder, not necessarily a holder for value, can cross a  
cheque (h). A cheque crossed generally may be converted by  
the holder into a specially crossed one by the addition of the name  
of the banker across its face. But the latter cannot be converted  
into the former by the obliteration of the name of the banker as  
it will be a material alteration of the document and will render  
it invalid altogether (i). A cheque that is specially crossed to  
a banker can again be specially crossed by that banker to another  
banker as his agent for collection (j). This is the only instance  
of a second special crossing and this can only be done by a  
banker for the purpose of collection.

A crossing is a material part of the cheque and any alteration  
of it except in the manner provided by this Act will be a  
material alteration to vitiate the instrument. When a drawer  
crosses a cheque he alone can cancel the crossing and make it  
open by inserting the words 'Pay cash' in the cheque but if that  
is not done under his full signature it will not be recognised.

(g) Chalmers (3rd Ed.) p 161

(h) *Akrokers Mines Ltd v Economic Bank*, (1904) 2 KB 465

(i) *Stewart v Lee*, (1828) 1 M & M 158

(j) *Akrokers Mines Ltd v Economic Bank*, (1904) 2 KB 465

When an uncrossed or a generally crossed cheque is sent to a banker for collection he can cross it specially to himself by having an indorsement in the cheque in his favour if such banker is the holder of the instrument (*k*)

**126.** Where a cheque is crossed generally,  
 Payment of cheque shall not pay it otherwise than to  
 crossed generally a banker

Where a cheque is crossed specially, the  
 Payment of cheque shall not pay it otherwise than to  
 crossed specially the banker to whom it is crossed,  
 or his agent for collection

### NOTES

The object of the provisions relating to the crossing of a cheque is that it would conduce to the ease of commerce, the security of property and the prevention of crimes if drawers or holders of drafts on bankers payable to bearer or order on demand, were enabled effectually to direct the payment of the same to be made only to, or through some banker (*l*) It follows, therefore, that crossing is only a direction to the drawee banker to pay the amount mentioned in the cheque through a banker when the crossing is general or through the banker named in the cheque or to his agent banker for collection if the crossing is special The drawee banker will not be justified in making payments in a manner contrary to the directions conveyed by the crossings If he does so, and any loss results thereby, he cannot debit the amount against the drawer's account, and if payment is made to a wrong person he will be liable to the true owner to make good such loss (*m*)

**127.** Where a cheque is crossed specially to  
 Payment of cheque more than one banker, except  
 crossed specially more when crossed to an agent for  
 than once the purpose of collection, the  
 banker on whom it is drawn shall refuse payment  
 thereof

(*k*) *Sutters v Briggs*, (1922) AC 1

(*l*) Preamble to statutes, 19 & 20 Victoria Chapter, 25

(*m*) Section 129 post

## NOTES

It has been noticed before under section 125 that a cheque that is specially crossed to a banker can again be specially crossed by that banker to another banker as his agent for collection (*n*) This is the only instance of second special crossing which can be resorted to by a banker for the purpose of collection alone Save and except this instance no other case of more than one special crossing is allowed by law The present section prohibits payment by a banker, on whom a cheque is drawn, if it bears more than one special crossing except the one mentioned above If any payment is made by the banker it must necessarily be made at his own risk

**128.** Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof

## NOTES

Payment of a crossed cheque by a banker in due course discharges him from all liability Payment in due course would mean payment made in conformity with the provisions of sections 10 and 126 Such payment must be made in good faith, without negligence and if the cheque is crossed generally it should be made to a banker and if it is crossed specially it should be made to the banker specially named on the cheque or his banker agent for collection On payment in due course the drawee banker will be discharged from all liability and can debit the amount with the drawer's account even if the amount does not reach the true owner The section has been enacted for the protection of the bankers If, however, the payment is not made in due course the banker will be liable to the true owner of the cheque provided the amount has not reached him



**129.** Any banker paying a cheque crossed generally otherwise than to a  
 Payment of crossed cheque out of due course banker, or a cheque crossed specially otherwise than to the  
 banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid

### NOTES

The section deals with the banker's liability when payment of a crossed cheque is made in contravention of the direction conveyed by the crossing. If a banker pays a cheque in contravention of the direction in the crossing as laid down in section 126 and the amount does not reach the true owner *i.e.* the bona fide holder for value of the cheque, he cannot charge the drawer with the amount of the cheque (*o*). Not only that, he is further liable, under this section, to compensate the true owner of the cheque for any loss sustained by the latter by reason of the payment by the banker in contravention of the provisions of section 126. Payment of a crossed cheque otherwise than through a banker is a strong evidence of negligence making the banker responsible to his customer (*p*) which can be rebutted by the banker on proof of good faith when he will not be liable.

**Banker when liable to holder:—**There is no privity of contract between the banker (drawee) and the holder of a cheque. His contract is with the drawer and, therefore, when a banker refuses payment to the holder of a cheque the latter has no remedy against the former. The holder can only proceed against the drawer and the endorser, if any. But if the banker makes a payment of a crossed cheque and such payment is made in contravention of the provisions of section 126, the true owner of the cheque will be entitled under this section to maintain an action against the banker for any loss sustained by him for such payment. A statutory obligation is cast on the banker to pay in a particular way and he will be liable for not making payment in that way.

**Crossing to be on the face of the cheque:—**This section is to be read subject to the provisions of section 89. Therefore, when a cheque is presented for payment which does not, at the time of presentation, show on the face of it the crossing or where

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(*o*) *Bobbet v Pinkett*, (1876) 1 Ex D 368  
 (*p*) *Bellamy v Marjoribanks*, (1852) 7 Ex 389

crossing is obliterated in such a manner as to avoid detection by the banker and the banker makes the payment in due course according to the apparent tenor of the cheque over the counter he will not only be not liable to the true owner for any compensation but will be able to charge the drawer with the amount. Here the essence of the whole thing is bona fide and good faith

**Crossed cheque stolen:**—If a crossed cheque payable to order is stolen from the payee and his endorsement is forged on it the banker who makes payment of the cheque to a person who paid value in good faith in contravention of the direction conveyed by the crossing cannot debit the drawer's account with the amount. The payee, in such a case, will be able to recover it from the person who has received payment from the banker. If, however, the drawer has allowed the banker to debit his account with the amount of the cheque he can recover the same from the person who has received payment from the banker (q). The case will, however, be different if the cheque be one payable not to order but to bearer and is not crossed with the words 'not negotiable'. In such a case the person who gets possession of the instrument bona fide for value becomes the holder and the payee ceases to be so and he cannot recover the amount from the person to whom payment is made by the banker (r). The payee has, however, a remedy against the banker who makes payment in contravention of crossing (s). When one person authorised his cashier to present a cheque crossed generally to a banker on whom it was drawn and the banker on presentation of the cheque made over another generally crossed cheque drawn by him upon another banker for the same amount to the cashier who, however, fraudulently misappropriated the amount it was held that the person having authorised the cashier to deal with the cheque was estopped from denying the authority of the cashier to receive payment in that manner and was not entitled to recover damages (t). A holder who loses a cheque cannot recover the amount from one who gets possession of the instrument bona fide for value and receives payment from the banker. The holder can proceed against the banker for having offended against the provisions of section 126

A banker who makes payment of a bill or cheque through mistake, as for instance, to a wrong person or under a forged endorsement can recover the amount from the person who has received payment provided that he gives notice immediately and

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(q) *Bobbet v Pinkett*, (1876) 1 Ex D 368

(r) *Smith v Union Bank*, (1875) LR 1 QBD 31

(s) B of Ex Act, Sec 79 (2)

(t) *Meyar & Co v Sze Hai Tong Banking*, (1913) AC 847

the party who has received payment has not changed his position in a way that repayment will prejudice him (u)

**130.** A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had

Cheque bearing "not negotiable"

### NOTES

Formerly, by striking out the word 'bearer', or 'order' a cheque could be made non-negotiable but now the only way to do it is to cross the cheque with the words 'not-negotiable'. The phrase "not negotiable" does not make the cheque non-transferable, it only takes away the negotiable character of the instrument, that is, a holder with a defective title cannot confer a good title on a holder in due course. In spite of this mode of crossing the cheque can be transferred but the transfer is not attended by the important consequences of a negotiable instrument. The most important advantage the holder in due course of a negotiable instrument gets by transfer is that he holds the instrument free from all the defects of title of his predecessors. But when the instrument is made 'not negotiable', although it does not cease to be transferable, there can be no holder in due course but only a holder and the transferee does not get that special advantage of holding the instrument free from all the defects of the transferor. He only acquires the right, title and interest of the transferor. In fact the transferee of a cheque crossed with the words 'not negotiable' has the same rights as those of an overdue bill or note. If the transferor has a good title the transferee will have a good title and if the transferor has a defective title so also will the transferee have. The holder *is* the transferee steps into the shoes of the transferor. It can be transferred by indorsement or delivery. Where H by false pretences obtained from G a cheque crossed '& Co' and 'not negotiable' and took it to a bank and received payment from the bank it was held that on account of the fraud H had no title to the cheque and the bank was liable for the amount of the cheque (v).

Where a cheque is made payable to A only, it is non-

(u) *Kienwoort v Dunlop Co*, (1907) LT 263, *Admiralty Commissioner v National Provincial*, (1928) 127 LT 452

(v) *Fisher v Roberts*, (1890) 6 TLR 354

transferable and payment can be made to A only and to no one else and, therefore, it cannot be transferred (*w*) (See also notes under section 13 ante)

The object of crossing a cheque with the words 'not negotiable' is to afford protection to the drawer or holder against accident, miscarriage or dishonesty in the course of transit by making it difficult to get the cheque cashed until it reaches its destination (*x*)

**131.** A banker who has in good faith and without negligence received payment for Non-liability of banker receiving payment of cheque a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment

*Explanation*—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof

## NOTES

The explanation to the section has been added by section 2 of the Negotiable Instruments (Amendment) Act VIII of 1922

Formerly there was no statutory protection given to the bankers in general for payment or collection of cheques tainted by forgery or with defective title of the person presenting the same, so that when a collecting bank received from its customers crossed cheques, they would either collect them or leave them alone, if they would collect them and the customer who sent the cheque for collection had a bad title, the banker became liable. This was, at all events, rather hard. It was, therefore, only reasonable that the legislature should relieve the bankers from some of the consequences against which no amount of foresight could possibly guard (*y*)

**Object of the section:**—While sections 82 and 128 of this Act afford protection to a banker who pays a crossed

(*w*) *Rama v Venkata*, 30 Mad. 75; 76 I C 282

(*x*) *Great Western Railway v London and County Bank*, (1901) AC 414

(*y*) *Mathiessen v London and County Bank*, (1879) LR 5 CPD 7

cheque in due course the present section gives protection to a banker who in good faith and without negligence receives payment for a customer of a crossed cheque. When, therefore, a banker receives from his customer a cheque crossed in his favour for collection and receives payment of the amount on his customer's behalf the fact that the customer's title to the cheque is defective will not render the banker liable to the true owner (s)

**Protection when given:**—In order to avail of the protection afforded by this section the conditions laid down here must be strictly complied with, otherwise the banker will remain liable for receiving payment for a customer with a defective title in the cheque. The conditions are,

(i) that the banker must receive payment in good faith and without negligence,

(ii) that such payment should be received for a customer and not on his own account as a holder,

(iii) that the customer for whom he acts must be his own customer,

(iv) that the cheque should be crossed generally or specially to himself

**Good faith and without negligence:**—A banker is entitled to protection under this section if he acts in good faith and without negligence. Whether a bank is guilty of negligence is a question of fact and depends on the circumstances of each case (a). The test of negligence is whether the transaction of paying in any given cheque is so out of the ordinary course that it should arouse doubts in the mind of the banker and cause him to make an enquiry. Thus, where a cheque payable to a public officer in his official capacity was endorsed by him and was presented by his clerk, a man of slender means, and the cheque was allowed to be collected and credited to his personal account it was held that in the circumstances the bank should have held an enquiry and not having done that was guilty of negligence and not entitled to the protection under the section (b). This obligation to take proper care has been imposed by the statute upon the banker in the interest of the true owner and, therefore, the question of good faith and want of negligence

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(s) *Morison v London County & Westminster Bank*, (1914) 3 KB 356

(a) *Robinson v Central Bank*, 1932 Rang 60, 9 Rang 585, *Lloyds Bank v Chartered Bank*, (1929) 1 KB 40, *Bapulal v Nath Bank*, 1946 Bom 482 227 IC 67

(b) *Ibid*

has to be considered from the point of view of the latter (c) The standard of care is what a reasonable business man would or would not do having regard to the surrounding circumstances and depends on the ordinary practice of bankers without inherent defects and not on the practice of individuals (d) It is no excuse that exercise of care would not probably lead to the detection of the defective title of the customer as the person who does not exercise reasonable care is not entitled to any protection under the section (e) If the name of the customer given in the instrument is different from the name given in the endorsement and the banker without noticing the discrepancy makes the payment he is guilty of negligence (f) Cheques which on the face of them do not belong to the person who places them for collection into his private account but belong to his employer, or his principal or firm or company and a fiduciary relation subsists between the two, necessitate enquiry and absence of enquiry imports negligence and disentitles the bank to the protection of the section If there are suspicious circumstances an enquiry is essential When, from certain circumstances, some collections and payments were found unprotected but the true owner, with knowledge of them did not disapprove of the same, the subsequent transactions were not negligent Thus, if banker in good faith collects a cheque signed 'per pro' he is not guilty of negligence merely because he does not enquire into the drawer's authority (g) But a bank will be guilty of negligence if it ignores a direction on a cheque like 'Account payee' (h) A cheque crossed with 'Account payee' must be received by a banker to the account of the person indicated thereon If it is not so received without enquiry the banker is guilty of negligence and is not entitled to protection (i) A bank is entitled to protection even if the drawer's signature in the cheque is forged (j)

**Customer:**—In order to entitle the banker to the protection afforded by this section the payment must be received for a customer of the bank The payment must not be received by the banker on his own account nor for a customer of another

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- (c) *Hannan v Armstrong*, (1900) 5 Com Case 188, 57 M L J 49
  - (d) *Savory v Lloyds Bank*, (1932) 2 K B 122, 1933 A C 201
  - (e) *Ibid*
  - (f) *Bavins v London South Western Bank*, (1899) 81 T L 655
  - (g) *Morison v London County & Westminster Bank Ltd*, (114) 39 K B 356
  - (h) *House Property Co v London Bank*, (1915) 84 L J K B 1846
  - (i) *Ibid*
  - (j) *Falconbridge on Banking & Bills of Exchange*, p 572

bank (*k*) A banker is protected only where he acts as a conduit pipe for conveying the cheque to the bank on which it is drawn and receiving the payment from that banker for its customer (*l*) A person who has habitual dealings in banking business with a bank having either a deposit or current account or some similar relation is a customer of the bank (*m*) A person who simply cashes cheques in a bank is not its customer (*n*) One bank can be a customer of another if the one claiming protection collects cheques for the other (*o*) A bank can credit the account of the customer on receipt of the cheques from him and in case of dishonour can reverse the credit to the constituent's account in respect of those cheques (*p*) A customer does not cease to be so because his account is overdrawn (*q*) But where the customer had overdrawn and the bank received the payment to extinguish the debt of the customer the bank was holder of the cheque for value (*r*)

**When to cross:**—The crossing must be done before the cheque reaches the banker, otherwise the section will not apply. The banker cannot claim protection by crossing the cheque after it reaches the bank (*s*)

**131-A.** The provisions of this chapter shall apply  
 Application of chapter to drafts to any draft, as defined in section 85A, as if the draft were a cheque

## NOTES

This section was added by section 2 of the Negotiable Instruments (Amendment) Act (Act 33 of 1947) setting at rest the doubt whether the provisions of this chapter would apply to a draft drawn by one branch of a bank on another. But by the Repealing and Amending Act (Act 35 of 1950) the aforesaid Act of 1947 has been wholly repealed subject to certain saving regarding some rights and obligations etc under the repealed Acts (Vide section 4 of Act 35 of 1950)

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- (*k*) *Gordon v London & Midland Bank*, (1902) 1 KB 242, 270, *Bapulal v Nath Bank*, 1946 Bom 482 227 IC 67
  - (*l*) *Ibid*
  - (*m*) *Mathews v Brown & Co.*, (1894) 10 TLR 386, *Great Western Ry v London & County Banking*, (1909) AC 414
  - (*n*) *Ibid*
  - (*o*) *Importers Co v Westminster Bank* (1927) 1 KB 869
  - (*p*) *Re Alliance Bank of Simla*, 40 CLJ 223
  - (*q*) *Clarke v London & County Banking & Co.*, (1897) 1 QB 552
  - (*r*) *Underwood v Barclay Bank*, (1924) 1 KB 799
  - (*s*) *Gordon v London and Midland Bank*, (1902) 1 KB 242, (1903) AC 240

## CHAPTER XV

### OF BILLS IN SETS

**132.** Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set, but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

### NOTES

Bills of exchange may be drawn in sets of two, three or more parts, three being the most usual number. This practice is common in case of foreign bills and indeed by the law of some countries it is compulsory. The object is to avoid delays and inconveniences which might otherwise arise from loss, mislaying, or miscarriage of the bill and also to enable the holder to transmit the same by different conveyances to the drawee, so as to ensure the most prompt and speedy presentment for acceptance and payment (*t*).

Each part should be numbered and should contain a reference to every other part of the set and a condition that it will be payable only so long as all the others are unpaid (*u*).

The whole of the parts constitute in such case one bill. Each part is signed by the drawer and all the parts should be delivered to the person in whose favour the bill is drawn, unless one part is forwarded to the drawee for acceptance (*v*).

**Rights and duties of holder:**—A holder who negotiates a bill drawn in a set is bound to deliver all the parts in his

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(*t*) Halsbury, Vol II p 560

(*u*) Ibid

(*v*) Ibid



possession but a negotiation of one part by him does not warrant his possession of the other parts or make him liable to deliver them if not in his possession

Where he endorses two or more parts to different persons he is liable on every such part, and every indorsee subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills

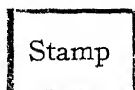
But as between the different holders the holder whose title first accrues is deemed to be the true owner of the bill. The true owner may possibly be entitled to recover the other parts even from a holder of them in due course, but in any case the rights of a person who in due course accepts or pays the part first presented to him are preserved (*w*)

**Rights and duties of drawee:**—The drawee may write his acceptance on any part, but he should do so on one part only, otherwise if two or more parts bearing his acceptance get into the hands of different holders in due course he is liable on every such part as if it were a separate bill

Where the bill or a part of it is presented to the acceptor for payment he should require the part which he has accepted to be handed over to him on payment of the bill, for otherwise, if the part bearing his acceptance is outstanding at maturity in the hands of a holder in due course, he is liable on it. Subject to this, however, the payment or other discharge of one part involves the discharge of the whole bill (*x*). Form of a bill in set of three

First part

Dacca  
The 22nd June, 1936



£50

Ninety days after sight pay this First of Exchange (Second and third of the same date and tenor being unpaid) to the order of X the sum of fifty pounds, valued received

To B

London

Second and third parts will also be similar to the first part with this difference that in the second 'first and third' and in

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(*w*) Ibid

(*x*) Halsbury, V II, p 561

the third 'first and second' remaining unpaid will be substituted in the portion within the bracket

**133.** As between holders in due course of different parts of the same set  
 Holder of first acquired part entitled to all he who first acquired title to his part is entitled to the other parts and the money represented by the bill

Vide notes on section 132 under head 'Rights and duties of a holder'

## CHAPTER XVI

### OF INTERNATIONAL LAW

**134.** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable

#### *Illustration*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India and is dishonoured. An action on the bill is brought against B in the States. He is liable to pay interest at the rate of 6 per cent only, but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

### NOTES

It has been noticed before that the maker, drawer, acceptor and indorser of a negotiable instrument all enter into distinct and separate contracts by their respective actions and, therefore, a negotiable instrument is not one single contract but embodies a series of different contracts entered in one place and to be performed in the same or in a different place. The question, that, therefore, necessarily arises is the law of which country, the

place where the contract is entered into or the place where it is to be performed, will apply in such a case? Ordinarily the law of one country has no application beyond its own territorial limit. But as the negotiable instrument plays an important part in the development of international trade, one country cannot altogether ignore but must recognise the law of another in the matter of such contract as a matter of necessity (y). This application of foreign law is, however, subject to its not being inconsistent with any statute intended to have extra territorial jurisdiction or with the policy of the land where the action is brought or with the maintenance of political institutions of that land. It shall not also involve interference with the authority of a sovereign right of a foreign sovereign in his country (z). The present section lays down what law will be applicable here in such cases.

**In the absence of contract:**—Under this section it is always permissible to the parties to stipulate expressly that their rights and obligations under the contract will be governed by a particular law. But when they do not make any such stipulation the liability of the maker or drawer of a foreign promissory note or a bill of exchange or cheque is regulated in all essential matters by the law of the place where the instrument was made, and the respective liabilities of the acceptor and the endorser are regulated by the law of the place where instrument is made payable. It is to be noted that where a contract is entered into by letters, the place of acceptance of the proposal is deemed to be the place where the contract is made.

The application of the international law may be considered under the following heads e.g.

- (i) The formality of the contract
- (ii) The capacity of the parties to enter into the contract
- (iii) Liability of the parties under the contract
- (iv) Procedure to be adopted for enforcing the contract

**Form:**—The formality of a document i.e. the form of drawing, acceptance or endorsement is governed by the law of the place where the contract is made i.e. *lex loci contractus*. Therefore, where an unstamped instrument is void under the law of the foreign country where it is made or drawn a suit will not lie in British India on that instrument (a). But if the instrument instead of being void for want of stamp becomes

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(y) Dicey, (4th Ed.) 8

(z) Ibid, p. 27, 28

(a) *Dhondiram v Sadasuk*, 42 Bom 522

merely inadmissible in evidence under the law of the place where it is made or drawn a suit will lie (b) Where a promissory note, to be valid and binding, does not require a stamp under the law of land where it is made, it can be sued upon in British India where such notes do require stamps (c) Similarly, it was held that a promissory note executed in the Pudukottah State which was void for want of registration under the law of that State, could not be sued on in British India where no registration was necessary (d)

**Capacity:**—There is a conflict of opinions with respect to the capacity of the parties to enter into a contract. According to some the law of domicile of a person governs his capacity to enter into a contract (e) But in a recent decision it has been held following the school of jurists led by Dicey that it is not the law of domicile that governs the capacity of the party to enter a mercantile contract but it is the law of the place where such contracts are made (f) The latter view is recommended by the conference of International jurists (g)

**Liability of the Parties:**—The liability of a party under a contract is ordinarily governed by the law of the place where the contract is to be performed or what is known as the *lex loci solutionis* (h) But under the Indian law the liability of the maker of a foreign promissory note is governed by the law of the place where the contract is made, i.e., the *lex loci contractus* (i) This decision given prior to the passing of this Act has been embodied in the present section Again, the liability of an acceptor or an endorser is determined by the law of the place where it is made payable Therefore, in case of a bill drawn in a foreign country and made payable in British India, neither protest nor dishonour was held necessary to charge the acceptor (j) It is to be noticed that under the international law the liability of the endorser is governed by the law of the place where the indorsement is made

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(b) *Venkataram v Sri Mahanaja*, 53 Mad 968, 1930 Mad 1004, 59 M.L.J. 548

(c) *Amina Begum v Nawab of Rampur*, 33 All 571, 10 I.C. 247

(d) *Palaniappa v Persa Kuruppa*, 17 Mad 262

(e) *Rohilkhand Bank v Row*, 7 All 490, 1885 A.W.N. 101 (F.B.); *Lachmi v Fateh*, 25 All 195, 1903 A.W.N. 5, *Kashibab v Sripat*, 19 Bom 697

(f) *T N S Firm v Mahomed*, 66 M.L.J. 458

(g) 9 Bom L.R. (Journal) 1

(h) *Benam & Co v L S Debeno*, (1924) A.C. 514

(i) *Mathappa v Chellappa*, 1 Mad. 196

(j) *Ardeshr v Khushaldas*, 32 Bom. 247; 10 Bom L.R. 268.

(k) *Byles on Bills*, (17th Ed.) p. 341

**Procedure:**—Rules of procedure are determined by the law of the place where the suit is instituted. It is *lex fori* *i.e.*, the law of the place of the suit that determines the remedies that are open to the party (*k*) and the procedure that has to be adopted by him for the enforcement of his right (*l*) but not defences as set off or discharge (*m*)

**135.** Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient

Law of place of  
payment governs  
dishonour

#### Illustration

A bill of exchange drawn and indorsed in the States, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

### NOTES

The section applies only where the place of payment of the instrument is different from the place of its making or indorsement. For where the place of making or indorsement and payment is the same no difficulty arises. Under this section what is dishonour and what notice of dishonour is sufficient will be governed by the law of the place where the instrument is made payable, *i.e.*, by the *lex loci solutionis*. Although the section mentions only dishonour and notice of dishonour the section applies to rules of maturity, demand and protest as well. Thus, where a bill is drawn in London on a person in Bombay who made it payable in Bombay no protest is necessary (*n*). Similarly, where a bill was drawn in London and made payable in Paris 90 days after date the maturity of the bill was determined by the French law under which days of grace were not allowed (*o*). The duties of the holder are also regulated by the *lex loci solutionis*, *i.e.*, the law of place where the contract is to be performed. The defendants shipped goods to London before the War, in an enemy vessel destined to enemy ports and the goods were covered

(l) *Palanappa v Periakaruppa*, 17 Mad 262

(m) *Murugesu v Annamali*, 23 Mad 458, 10 MLJ 39

(n) *Ardesur v Khushaldas*, 32 Bom 247, 10 Bom LR 268

(o) *Rouquette v Overmann*, (1875) LR 10 QB 525

by bills of exchange which drawn in Calcutta on London firms were discounted with and endorsed to the plaintiffs in Calcutta. The bills reached London, one on the day war was declared and the others on a subsequent day. The endorsees duly presented the bills for acceptance but they were returned dishonoured by the drawees. Held, that the further performance of the contract became impossible owing to war and there being no obligation of the drawees to accept, the plaintiffs were not bound to give notice of dishonour (*p*)

**136.** If a negotiable instrument is made, drawn, accepted or indorsed out side the States, but in accordance with the law of the States, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon within the States

### NOTES

The word States is the substitute for British India. In Pakistan it should read as Provinces (*p*<sup>1</sup>)

Under section 134 *ante* the law of the country where the contract is entered into determines the formal and essential validity of the contract. The present section is an exception to that rule. Under this section in spite of the invalidity of the foreign instrument, according to the law of the place where it is made, a subsequent contract by acceptance and endorsement may be valid in India and Pakistan if the same conforms to the Indian and Pakistan laws and such subsequent agreement between the parties will be enforceable in these courts. The subsequent parties to the contract created by the acceptance and endorsement in India or Pakistan will be bound by it for the simple reason that a negotiable instrument embodies in it a series of contracts and that the invalidity of the first part will not affect the subsequent part. Under the English law a bill issued out of the United Kingdom will not be invalid only for want of stamp in accordance with the law of the place of issue (*q*). Indian Courts also recognise the same rule (*r*). There is no provision of law which requires a

(*p*) *Sukhlal v Eastern Bank*, 46 Cal 584, 58 IC 641

(*p*<sup>1</sup>) Indian A O 1950 Pakistan A O 1947

(*q*) B of E Act, 72 (1)

(*r*) *Subrayan Pillai v Subraya Mudali*, 4 MHCR 14

promissory note executed out of India to be stamped before it is sued on or used in court where the holder of the note has not done any of the acts referred to in sections 5 and 18 of the Stamp Act (s) Therefore, an unstamped instrument must be stamped before negotiation in India but an action will lie on such an unstamped instrument without affixing a stamp if it is not negotiated in India

**137.** The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of the States, unless and until the contrary is proved

Presumption as to foreign law

## NOTES

A party relying on foreign law, as distinct from Indian law, must prove what it is This may be done by the production of the law books or by the opinion of foreign courts or by the statements of experts The ordinary presumption is that foreign laws are similar to the Indian laws The difference must be proved by him who alleges it Under section 57 of the Indian Evidence Act courts are empowered to take judicial notice of all Acts passed by the British Parliament and can, therefore, take judicial notice of the Bills of Exchange Act

## CHAPTER XVII

### NOTARIES PUBLIC

**138.** The Central Government may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act

Power to appoint notaries public

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(s) *Mahamad v Mahamad*, 22 Mad 337; 9 MLJ 135, *Kunhi v Panika*, 36 MLJ 188, 52 IC 477

## NOTES

The words 'Local Government' which were substituted for the words 'Governor General in Council' by section 2 and the schedule of the Decentralisation Act IV of 1914 have been replaced by Central Government (t)

**139.** The Central Government may, from time to time, by notification in the official Gazette make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

Power to make rules  
for notaries public

## NOTES

Rules for the guidance and control as well as for the fees of the Notaries Public can, under this section, be framed by the Local Governments. A notary public is to keep a register called 'Notarial Register' to make entries of noting, protests, and declarations of payment for honour. He has also to keep a round seal bearing his name or the name of his office with the words 'Notary Public' written there. The District Judge or any other officer appointed in this behalf by the Local Government can inspect his office not more than twice a year. For rules vide Appendix II.

## SCHEDULE

[*Enactments repealed*]

*Repealed by the Repealing and Amending Act, 1891 (XII of 1891)*







## APPENDIX I

### FORMS OF INSTRUMENTS

#### 1. Promissory notes.—

##### A. Payable on demand

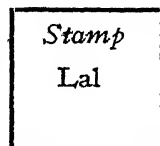
##### (a) Single liability

Rs 2000/-

*Calcutta, 1st July, 1936*

(a) On demand I promise to pay to Mr Sambhu Nath Law or order the sum of Rupees Two Thousand with interest at Rs 6 per cent per annum until repayment.

Matl



Roy

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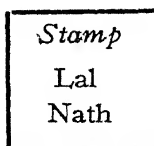
##### (b) Joint liability

Rs 2000/-

*Calcutta, 1st July, '36*

On demand we promise to pay to Mr Sambhu Nath Law or order the sum of Rupees Two Thousand only for value received with interest at Rs 6 per cent per annum until repayment

Matl  
Surendra



Roy  
Roy

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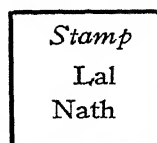
## (c) Joint and Several liability

Rs 2000/-

*Calcutta, 1st July, '36*

On demand we jointly and severally promise to pay to Mr Sambhu Nath Law or order Rupees Two Thousand only with interest at Rs 6 per cent per annum until repayment

Matī  
Surendra



Roy  
Roy

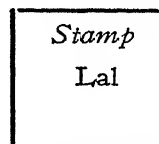
## (d) Without stipulation for interest

Rs 2000/-

*Calcutta, 1st July, '36*

On demand I promise to pay to Mr Sambhu Nath Law or order the sum of Rupees Two Thousand only, value received

Matī



Roy

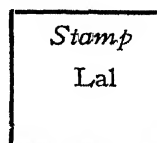
**B. Payable after date**

Rs 2000/-

*Calcutta, 1st July, '36*

One month after date I promise to pay to Mr Sambhu Nath Law or <sup>Order</sup><sub>Bearer</sub> the sum of Rupees Two Thousand with interest at Rs 6 per cent per annum until repayment

Matī



Roy

Other forms will be like the 'on demand' notes with this difference that the words 'on demand' will be replaced by the words ——days or months after date'

## 2. Bills of Exchange:—

### A. Inland Bills

(a)

Rs 3000/-

*Calcutta, 1st August, 1936*

Sixty days after date pay to Narendra Bose or order the sum of Rupees Three Thousand, value received

Bejoy Prosad Roy

To

A K Mukherjee & Co ,  
Midnapore

---

(b)

Rs 2000/-

*Darjeeling, 13th September, 1936*

Three months after date pay to bearer the sum of Rupees Two Thousand, value received

Bibhutī Charan Ray

To

Messrs Chowdhury & Co ,  
Pollock Street,  
Calcutta

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(c)

Rs 1000/-

*Dacca, 12th June, 1936*

Thirty days after date pay to S P Ghose or bearer the sum of Rupees One Thousand for value received

Nerode Ray

To ,

Dhakeswarī Cotton Mills Ltd ,  
Dacca

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(d)

Rs 5,000/-

*Shillong, 1st July, 1936*

One month after date pay to my order the sum of Rupees  
Five Thousand

Nirmal De

To

Messrs De Doss & Co ,  
Shillong

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(e)

Rs 3,000/-

*Howrah, 10th June, 1936*

On demand pay to Kamalaya & Co or order the sum of  
Rupees Three Thousand, for value received

Sailesh Sen

To

P C De  
Commercial Buildings,  
Dalhousie Square,  
Calcutta

Note—No (e) can be treated both as a bill as well as a  
promissory note at the option of the holder

### **B. Forms of Foreign Bills.**

(a)

Rs 15,000/-

*London, 1st February, 1935*

Sixty days after sight of this First of Exchange (second and  
third of the same tenor and date unpaid). pay to the order of  
Messrs Army Navy Stores Ltd, Calcutta, the sum of Rupees  
Fifteen Thousand only, value received.

(Sd ) Army Navy Stores Ltd

To

Messrs Rankin & Sons,  
Calcutta

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(b) The second would read as—

*London, 1st February, 1935.*

Sixty days after sight of this Second of Exchange (first and third of the same tenor and date unpaid) pay to the order of Messrs Army Navy Stores Ltd, Calcutta, the sum of Rupees Fifteen Thousand only, value received

Rs 15,000/-

(Sd ) Army Navy Stores, Ltd.

To

Messrs Rankin & Sons,  
Calcutta

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(b)

**The Central Exchange Bank of India Ltd.**  
*49-53, Bishop Gate, London, E C 2*

*7th May, 1937.*

(c)

No r/1

Rs 350/-

On demand pay this First of Exchange (the second of the same tenor and date being unpaid) to the order of Mr Rupees Three Hundred and Fifty, value received

For the Central Exchange Bank of India Ltd.

To

The Manager,	Manager,
1082 The Central Bank of India, Ltd ,	
Dacca	Accountant

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**The Central Exchange Bank of India Ltd.***49-53, Bishop Gate, London, E C 2**7th May, 1937*

(d)

*No r/1*

Rs 350/-

On demand pay this Second of Exchange (the first of the same tenor and date being unpaid) to the order of Mr  
 value received Rupees Three Hundred and Fifty,

For the Central Exchange Bank  
 of India Ltd ,

To		Manager
	The Manager Central Bank of India Ltd ,	
	Dacca	Accountant
1082		

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*Section 7*

Bill with the drawee in case of need

Rs 2,000/-

*Calcutta, 1st June, 1936*

Three months after date pay to the order of Mr B C Roy  
 the sum of Rupees Two Thousand, value received

K C Roy

To

M N Roy,  
 Esplanade, Calcutta

In case of need with  
 The Central Bank of India Ltd , Calcutta



**Forms of acceptance of the bills of exchange.**

Rs 3,000/-

K

*Calcutta, 18th August, 1937*

Sixty days after date pay to Narendra Nath Bose or order  
the sum of Rupees Three Thousand for value received

Bijoy Prasad Roy

To

A K Mukherjee & Co,  
Midnapore

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Rs 2,000/-

Chaudhury &amp; Co

*Darjeeling, 13th September, '36*

Three months after date pay to bearer the sum of Rupees  
Two Thousand

Bibhutī Charan Roy

To

Messrs Choudhury & Co,  
Pollock Street,  
Calcutta

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Rs 1,000/-

payable  
at Imperial Bank of  
India  
Dhakeswari  
Cotton Mills Ltd

*Dacca, 12th June, 1936*

Thirty days after date pay to S P Ghose or bearer the sum  
of Rupees One Thousand for value received

Nirode Ray

To

Dhakeswari Cotton Mills Ltd,  
Dacca

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Bills may be accepted *supra protest* or accepted payable at a specified bank and not elsewhere. In such cases those words have to be written across the bill as shewn above and signed

*Section 16***Endorsements.**

1 Dhakeswari Cotton Mills Ltd (in blank)

2 Pay to Sarat Bose,

Dhakeswari Cotton Mills, Ltd.  
(in full)**Forms of cheque and special and general crossings.***Section 6**Dacca, 15th June, 1937*Imperial Bank of India, Ltd  
Dacca*No A 12318*Pay to Asutosh Banerjee or bearer Rupees Two Hundred  
only.

Rs 200/-

Parimal Bose.

*Dacca, the 15th June, 1937.*Imperial Bank of India, Ltd.  
Dacca*No AB 46819*Pay to Asutosh Banerjee or order Rupees Two Hundred  
only

Rs 200/-

Parimal Bose.

**General Crossing****Section 123.***Dacca, the 15th June, 1937*Imperial Bank of India Ltd.,  
Dacca*No AB 46819*Pay to Asutosh Banerjee or order Rupees Two Hundred  
only.

Rs 200/-

Parimal Bose.

Other marks which may likewise be put in case of general crossing are —

Not negotiable

& Co

Not negotiable

& Co

## Section 124.

### Special Crossings.

Lloyds' Bank

Not negotiable

Central Bank of India Ltd

Not negotiable

Bengal Central Bank Ltd  
for account of payee

**Specimens of different forms of hundis.**

- (1) *Shahjog hundi*—page 27  
(1) BOMBAY

At Bombay Seth—please accept salutations of the writer  
Seth—from— We have received Rs 1,000 from— Please  
pay the presenter on demand as per rules of the Bombay Shroff  
Mahajan after assuring yourself that the presenter is a Shah

*Dated the 12th Dark day of  
Bhadrapod Samvot year, 1895*

Rs 10,000/-

*Signature*

## (2) BENGAL

To Bhai Kesri Chand Sukan Chand of the good and prosperous place Calcutta—by Kesri Chand of the port of Calcutta whose complements please accept Further (we draw) Hundi here for Rs 400/- in words rupees four hundred full double of rupees two hundred the half thereof, in favour of Bhai Baldeo Das Asaramji Please pay after 511 five hundred and eleven days from Mitī Sawan 1 Sudī 5 Thursday, value in Company's coin to the respectable holder Mitī Sawan 1 Sudī 5 Sambat 1966 Thursday

(on the back)

4001

Kesri Chand Sepani

Due 15th December, 1910

To Kesri Chand Sukan Chand

## (3) BENGAL

To Bhai Kesri Chand Sukan Chand of the good and prosperous place Siliguri Please accept the complement of Kesri Chand Sukan Chand from the port of Calcutta Further 1 Hundi for Rs 400/- rupees four hundred being full double of two hundred rupees the half thereof, (drawn) in favour of Bhaiji Baldeodasji Asaramji here please pay in Company's current rupees *Shahjog* (i.e. to the respectable holder) after 542 five hundred and fortytwo days from Thursday Mitī first Sravan Sudī 5 Sravan Sudī 5 the first of the Sambat year 1966

Signature of Kesri Chand Please accept the hundi

(on the back)

400

Due date 15th January, 1911

(ii) *Jokhmi Hundi* (p 28)

To wit here have been kept and retained from Shah  
 Rs \_\_\_\_\_ in full, so the *hundi* is *jokhmi*  
 on board the vessel \_\_\_\_\_, nakwa \_\_\_\_\_ owner  
 After the fixed time 4 (four) days after the vessel shall have  
 arrived safely from the sea port town of \_\_\_\_\_ at  
 the seaport town of \_\_\_\_\_ do you pay to  
 Shah \_\_\_\_\_

Signature

(iii) *Namjog Hundi* (p 29)

To Vitalbhai of Bombay worthy of all praise Written from  
 Karachi by Damodardass from whom please accept salutations.  
 To wit Please pay on receipt of this Hundi to Ballav Chamaria  
 according to custom of Hundi, the sum of Rs 500/- double of  
 half the sum of two hundred and fifty for value received

Date

Signature

(iv) *Zikri Chit* (p 29)

To good place Dwaraka Letter written to brother Mohonlal  
 from Haridoyal, who sends greetings We had sold Hundi for  
 Rs 65/- (sixty-five) from Dwaraka on Sanwal Das, by Radha  
 Kishan, favouring Lodhi Pershad dated 10th day of Bhadon  
 Samvat 1934 payable to *bona fide* person, in the currency of the  
 market, to brother Baldeo Sahai Gopinath who informs us that  
 the *hundi* is unpaid If this *hundi* has been paid well and good.  
 If not please pay this *hundi* as stated in this letter debiting the  
 amount to our account and return the *hundi* unendorsed to us

Letter written 11th day of the latter half of Katak,  
 Sambat, 1935

Sd/- Haridoyal

(v) *Darshan Hundi* (p 30)

(a) At Bombay Seth Shohanlal please accept salutations of  
 the writer Seth Badridass from Calcutta. We have received  
 here (Rs 1,000) one thousand only from Seth Gokuldass Please  
 pay to the presenter at sight and debit the same to our account  
 Please pay the double of five hundred, *viz* one thousand only,  
 according to the rules of the Bombay Shroff Mahajan

Date

Badridass

(b) *Darshan Hundī*, Madras

17th September, 1929

Purattasi, 3rd 1105

At sight please pay to Mr Sankaralingam, yarn dealer, the sum of Rs 1,000/- (Rupees One Thousand only) and debit Srivilliputtur firm account after due entry on the reverse hereof

Signature

---

(c) BENGAL,

May Sri Hari help us

No

(The firm of the) late Jagabandhu Sen Poddar,  
begs to inform you this day Sj of Dacca  
Rupees (in words) immediately after the receipt of  
this in Calcutta, please pay the above amount to Sj  
or order

This day 1336 B S

Reserve

To

Most Blessed

Sriman Prasanna Kumar Sen Poddar,

Calcutta, Barrabazar,

14, Shibtala Street

---

(vi) *Muddat Hundī* (Bengal)

(a) May Sri Durga protect us Obedient servant Sj Hari Charan Das begs with many salutations to inform you That a hundi Rs 1,000/- double of rupees five hundred (Rupees one thousand only) is issued upon you from this place The amount has been deposited here by Sri Amar Nath Bose The muddat is 25 days and the grace is 3 days i.e. in all 28 days On receipt of this hundi you please accept it and pay the sum to a person with credit on due date after the muddat and take receipt on the back of the Hundi This is the prayer to your auspicious feet Thus ends this Hundi, 10th Ashar, 1335 B S Monday

To.....

Signature

---

(b) To X

Date

Sixty days after date please pay to Y of \_\_\_\_\_ or order  
the sum of Rs 1,000/- (rupees one thousand only) with interest  
at \_\_\_\_\_ per cent per month and debit the amount to our account

Signature

(vii) *Dhanjog Hundi*

Bow to Sri Ganesh

To X written from \_\_\_\_\_ by Y from whom please  
accept salutations To wit Pay at once on receipt of this  
Hundi to Dhanjog according to the custom of hundis

Rs -1,000/- in words one thousand double of half the sum  
five hundred on behalf of Z of this place for value received

Date

A

Signature

(viii)

*Purja* (hundi) is an acknowledgment of debt This is used  
generally in connection with short-term loans, not exceeding three  
months It is stamped with one anna stamp

Honoured brother Nathuram Takal Chand be pleased to  
accept the greetings (Ram Ram) of Bhuramal Gopinath Further,  
Rs 500, in words rupees five hundred, is being taken from you  
the interest on which at the rate of 6 as is sent herewith Please  
accept it and pay the money to Jamadar, dated 30th day of  
Magh, 1986 Sal

Sd/- Sawanlal Nahata

(ix) Hundi for goods sent

Rs

Due 19  
Place and date

At \_\_\_\_\_ days after sight please pay to \_\_\_\_\_ or order  
the sum of rupees \_\_\_\_\_ only for value received against  
R/R

To Drawee (address)

Signature

## APPENDIX II

### RULES RELATING TO NOTARIES PUBLIC

#### Order 65 (b)

*Notification of the Government of India No 1433, Judicial dated the 30th September, 1886*—In exercise of the power conferred by section 139 of Act XXVI of 1881, The Negotiable Instruments Act, 1881 (as amended by Act 11 of 1885), the Governor-General in Council is pleased to make the following Rules for the guidance and control of Notaries Public appointed under that Act, the fixing of the fees payable to those Notaries —

1 Notaries Public shall, in transacting business under the Act, use the forms set forth in the appendix to this Notification

2 Besides recording declarations of payment for honour (sec 113), Notaries Public shall, following the practice existing in the Presidency towns, also register notings and protests made by them. No particular form or register is necessary for these purposes, but Notaries Public shall keep a substantial blank book in which to enter copies of all the letters which they may write for presenting bills for acceptance or payment or better security of all bills,\* noted or protested or paid for honour, together with all the indorsements thereon (including that made by themselves, to the effect that the bill has been noted or protested for non-acceptance or non-payment or want of better security), and of all protests made by themselves and of all declarations made by payers for honour. Notaries Public shall further, after examination of each entry in book, affix their signature thereto, and where demand of acceptance or payment or better security was made by a clerk, shall cause him to affix his signature also the entry relating to the demand

3 The book shall be known as the Notarial Register, and the pages thereof shall be numbered consecutively

4 Every Notary Public shall permit the District Judge or such officer as the Local Government, from time to time, appoints in this behalf to inspect his register at such times not oftener than twice a year, as the District Judge or officer may fix

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\* In cases where the language of the bill is unknown to the Notary Public, and where it is impossible to find anyone acquainted with the language of the bill to copy it into the register, an entry in the register of an abstract of the bill will be sufficient



5 When the original instrument is in an oriental language, any noting or protest or entry in his register which has to be made in respect of the instrument by a Notary Public may be made either in that language or in English

6 In making presentments of bills or notes, Notaries Public shall observe the provisions of Chapter V of the Act —

## APPENDIX A

Provided that it shall not be necessary for a Notary Public to allow the drawee of a bill of exchange, time for deliberation, as provided in section 63

7 Every Notary Public shall use a plain circular seal, bearing, if he has been appointed by name, his name and the name of the local area within which he has been appointed to exercise his functions, and the circumscription, "Notary Public", and if he has been appointed by virtue of his office, the name of his office and of the local area within which he has been appointed to exercise his functions and the circumscription "Notary Public"

8 Every Notary Public shall have an office at such place within the local area for which he has been appointed as may be approved in this behalf by the District Judge

9 Every Notary Public shall charge fees at rates mentioned below, namely —

(1) For noting an instrument—

If the amount of the instrument does not exceed		Rs
Rs 1,000		2
If it exceeds Rs 1,000 but does not exceed Rs 5,000		3
Do „ 5,000	do „ 20,000	5
Do „ 20,000	do „ 30,000	6
Do „ 30,000	do „ 50,000	7
Do „ 50,000		8

(2) For protesting an instrument

If the amount of the instrument does not exceed		Rs
Rs 1,000		6
If it exceeds Rs 1,000 but does not exceed Rs 5,000		7
Do „ 50,000	do „ 20,000	10
Do „ 20,000	do „ 30,000	11
Do „ 30,000	do „ 40,000	12
Do „ 40,000	do „ 50,000	13
Do „ 50,000	do „ 60,000	14
Do „ 60,000	do „ 70,000	15

Do	„ 70,000	do	„ 80,000	16
Do	„ 80,000	do	„ 90,000	17
Do	„ 90,000	do	„ 1,00,000	18
Do	„ 1,00,000			22

(3) for recording a declaration of payment for honour

Rs 2/8/0

(4) Duplicate protests,—half charge for the original

Note—In addition to the above fees, travelling allowance at the rate of 3 annas a mile by rail and 8 annas by road, may be charged when the Notary Public is required to attend at any place more than one mile from his office

10 These rules come into force on the 1st day of January  
1887

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## APPENDICE

### I

#### **Form of Noting**

(See Section 99)

*(To be made upon the instrument or upon a paper attached thereto, or partly upon each)*

Reference to page in Notarial Register

Date of presentment and dishonour

Reason if any, assigned for dishonour (or, if the instrument has not been expressly dishonoured, reason why holder treats it as dishonoured)

Date of note

Sd A B

*Notary's charges*

*Notary Public*

### II

#### **Form of protest of Bill of Exchange for Non-acceptance.**

(See Section 101)

On the day of 19, I, A B, A Notary Public appointed under the Negotiable Instruments Act, 1881 of in (here state the local area for which the Notary Public has been appointed) in British India at the request of C D of , did at (in person by my clerk) (by registered letter,) cause due and customary presentment to be made to, and did demand acceptance of, the bill of exchange hereto annexed (or "a literal transcript whereof and everything written or printed thereupon is hereto annexed") from E F, the person upon whom the said bill is drawn, to which demand he made answer (state terms of answer if any) (or "to which demand he gave no answer"), wherefore I, the said Notary, at the request aforesaid by this writing, do, in the presence of M N, and O P, witnesses, protest against the drawer of the said bill of exchange and all other parties thereto and all others concerned for all exchange, re-exchange and all costs, damages and interest present and to come for want of acceptance of the said bill

M N,

O P,

} *Witnesses*

Which I attest

Sd A B

*Notary Public*

Note—When after a bill is protested and before the protest is drawn up, it is accepted for honour, the protest should further state the names of the person by whom, and of the person for whom, and the manner in which, such acceptance was offered and effected

### III

#### **Form of protest of bill of exchange for non-acceptance, when the drawee cannot be found.**

(See Section 101)

(a) Where search was made by Notary Public in person or by his clerk —

On the                      day of                      19,                      I, A B, a Notary Public appointed under the Negotiable Instrument Act, 1881, of                      in (here state the local area for which the Notary Public has been appointed) in British India at the request of C D, of                      , did (in person) (by my clerk) make due search at for E F, in order to present to, and demand from him, acceptance of the bill of exchange hereto annexed (or “a literal transcript whereof and of everything written or printed thereupon is hereto annexed”) which is drawn upon the said E F, but was unable to find him, wherefore I, the said notary, at the request aforesaid by this writing, do, in the presence of M N, and O P, witnesses, protest against the drawer of the said bill of exchange and all other parties thereto and all others concerned for all exchange or re-exchange, and all costs, damages and interest present and to come for want of acceptance of the said bill

(b) Where registered letter was sent to the drawee —

On the day of                      19, I, A B, a Notary Public appointed under the Negotiable Instruments Act, 1881 of                      in (here state the local area for which the Notary Public has been appointed) in British India, at the request of C D, of                      , did send by post a registered letter addressed to E F at                      , wherein I enclosed and demanded from him acceptance of the bill of exchange hereto annexed (or “a literal transcript whereof and of everything written or printed thereupon is hereto annexed”) which is drawn upon the said E F, but the letter was returned undelivered, because the said E F could not be found, wherefore I, the said notary, at the request aforesaid by this writing, do, in the presence of M N, and O P, witnesses, protest against the drawer of the said bill of exchange, re-exchange and all costs,

damages and interest present and to come for want of acceptance of the said bill

M N ,	} <i>Witnesses</i>	Which I attest
O P ,		Sd/- A B <i>Notary Public</i>

Note—When, after a bill is protested and before the protest is drawn up, it is accepted for honour the protest should further state the name of the person by whom, and of the person for whom, and the manner in which, such acceptance was offered and effected

#### IV

#### **Form of protest of promissory note or bill of exchange for non-payment.**

(See Section 101)

On the day of 19, I, A B , a Notary Public, appointed under the Negotiable Instruments Act, 1881, of in (here state the local area for which the Notary Public has been appointed) in British India at the request of C D , of did cause due and customary presentment to be made at (in person) (by my clerk) (by registered letter) to and did demand payment of the promissory note (or bill of exchange, as the case may be), to which demand he made answer (state the terms of his answer, if any) (or “to which demand he gave no answer”), wherefore, I, the said notary, at the request aforesaid, by this writing, do, in the presence of M N and O P , witnesses, protest against the maker of the said promissory note (or the drawer of the said bill of exchange, as the case may be) and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damages and interest present and to come for want of payment of the said promissory note (or bill of exchange, as the case may be)

M N ,	} <i>Witnesses</i>	Which I attest
O P		Sd/- A B <i>Notary Public</i>

Note—When after a bill is protested and before the protest is drawn up, it is paid for honour, the protest should further state the name of the person by whom and of the person for whom, and the manner in which such payment was offered and effected

## V

**Protest of Promissory Note or Bill of Exchange for  
non-payment when the maker, drawee or acceptor  
(as the case may be) cannot be found.**

(See Section 101)

(a) Where search was made by Notary Public in person or by his clerk —

On the            day of            19, I, A B, a Notary Public appointed under the Negotiable Instruments Act of 1881 of            in (here state the local area for which the Notary Public has been appointed) in British India, at the request of C D of, did (in person) (by my clerk) make due search at            for E F the maker (or drawee or acceptor, as the case may be) in order to present to and demand from him payment of the promissory note (or "bill of exchange" as the case may be) hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed"), but was unable to find him, wherefore I, the said notary, at the request aforesaid, by this writing, do, in the presence of M N and O P, witnesses, protest against the maker of the said promissory note (or drawer of the said bill of exchange, as the case may be) and all other parties thereto and all others concerned for all exchange, re-exchange and all costs, damages and interest present and to come for want of payment of the said promissory note (or bill of exchange, as the case may be)

(b) Where registered letter was sent to the maker, drawee or acceptor

On the            day of            19, I, A B, a Notary Public appointed under the Negotiable Instruments Act, 1881, of            in (here state the local area for which the Notary Public has been appointed) in British India, at the request of C D, of           , did send by post a registered letter addressed to E F, at wherein I enclosed the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") and did by such letter demand from the said E F, the person on whom the said bill is drawn and whose acceptance appears thereon, better security for the payment thereof when the same should become payable in consequence of his having become insolvent (or "his credit having been publicly impeached," as the case may be), but the said letter was returned undelivered because the said E F, could not be found, wherefore I, the said notary, at the request aforesaid, by this writing, do, in the presence of M N and O P, witnesses,

protest against the drawer of the said bill of exchange and the acceptor and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damages and interest present and to come for want of better security for the payment of the said bill when due and payable

M N ,	} <i>Witnesses</i>	Which I attest
O P ,		Sd/- A B <i>Notary Public</i>

Note—When after a bill is protested and before it is drawn up, it is accepted for honour, the protest should further state the name of the person by whom, and of the person, for whom, and the manner in which, such acceptance was offered and effected

## VIII

### **Form of notice of protest to drawee to be given by a notary public.**

(See Section 102)

Take notice that bill of exchange for (here state the amount) drawn by you under date                      on                      and payable at                      has been dishonoured by non-acceptance (or non-payment, as the case may be) and protested, and that you will be held liable thereon

Sd/- A B  
*Notary Public*

## IX

### **Form of notice of protest to indorser to be given by a notary public.**

(See Section 102)

Take notice that a bill of exchange for (here state the amount) drawn by                      under date                      the                      on and payable at                      and bearing your indorsement has been dishonoured by non-acceptance (or non-payment, as the case may be), and protested, and that you will be held liable thereon

Sd/- A B  
*Notary Public*

## X

**Form of notarial act of declaration having been  
made by a payer for honour.**

(See Section 113)

On the \_\_\_\_\_ day of \_\_\_\_\_ 19, I, A B ,  
a Notary Public appointed under the Indian Negotiable  
Instruments Act, 1881, of \_\_\_\_\_ in (here state the  
local area for which the Notary Public has been appointed) in  
British India do hereby certify that the bill of exchange hereto  
annexed (or "a literal transcript whereof and of everything  
written or printed thereupon is hereto annexed") (now  
protested for non-payment) was this day exhibited to Y Z of  
in the Presidency of \_\_\_\_\_ in British India (or to \_\_\_\_\_ his  
Province  
agent in his behalf, as the case may be), who declared before  
me that he, the said Y Z would pay the amount of the said bill  
under protest for the honour of (here insert the name of the  
party for whose honour the payment is to be made, holding  
the said (here insert the name of the party for whose honour  
the payment is to be made) and the drawer and all other proper  
persons responsible to him, and the said Y Z , for the amount of  
the said bill and for all proper costs, interest, damages and  
expenses I have, therefore, in the presence of M N and O P  
witnesses, granted this Notarial Act of honour accordingly

M N ,        }  
O P ,        } *Witnesses*

Which I attest,  
(Sd/-) A B  
*Notary Public*

\_\_\_\_\_



## APPENDIX III

### ON PROCEDURE

Sections of the Code of Civil Procedure relevant to suits on Negotiable Instruments

- 15.** Every suit shall be instituted in the court of  
the lowest grade competent to try  
it
- Courts in which suits  
to be instituted

### NOTES

This section is a rule of procedure and not of jurisdiction (a)  
Although a subordinate judge has jurisdiction to try a suit over  
which a munsiff has jurisdiction the suit must be instituted in the  
court of the lowest grade having jurisdiction to try the same  
But the trial of the suit by a court of higher grade is a mere  
irregularity (a<sup>1</sup>)

- 20.** Subject to the limitations aforesaid, every suit  
shall be instituted in a court within  
the local limits of whose jurisdiction—
- Other suits to be insti-  
tuted where defendants  
reside or cause of action  
arises

- (a) The defendant, or each of the defendants  
where there are more than one, at the  
time of the commencement of the suit,  
actually and voluntarily resides, or carries  
on business, or personally works for gain,  
or
- (b) any of the defendants, where there are more  
than one, at the time of the commencement  
of the suit, actually and voluntarily re-  
sides, or carries on business, or personally  
works for gain, provided that in such  
case either the leave of the courts is given

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(a) *Nadhlal v Mazhar*, 7 All 230, A W N 1885, 1 (F B )

(a<sup>1</sup>) *Suryanarayana v Bullayya*, 1927 Mad 568, 52 M L J 323, 24 L W  
367, *Maungsi Paung v Maung Tun*, 1925 Rang 278; 4 Bur L J  
104, 90 I C 728

or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution, or

(c) the cause of action wholly or in part arises.

*Explanation I*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such residence

*Explanation II*—A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any place where it has also a subordinate office at such place

#### *Illustrations*

(a) A is a tradesman in Calcutta B carries on business in Delhi B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company A delivers the goods accordingly in Calcutta A may sue B for the price of the goods, either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business

(b) A resides at Simla, B at Calcutta and C at Delhi A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A A may sue B and C at Benares, where the cause of action arose He may also sue them at Calcutta, where B resides, or at Delhi where C resides, but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the court

#### NOTES

The words 'cause of action' are not limited as to mean the whole cause of action, but include any material fact of it, not necessarily all the facts constituting the right to sue (*a*<sup>2</sup>) Where an instrument is executed, delivered and made payable at one and the same place the cause of action wholly arises at that place (*b*) But where it is executed at one place and is delivered and made payable in another the cause of action also partly arises in the latter place and a suit can be instituted at the latter place as well (*c*) Where a note is made payable at more than

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(*a*<sup>2</sup>) *Banka Behari v Phake Ram*, 25 All 48

(*b*) *Ram Gopal v Richard Blaquiere*, 1 BLR 35

(*c*) *Muhammad v Mahammad*, 2 PR 1916, 31 IC 698, *Winter v Round*, 1 MHC R 202; *Lahri v Hardeynarain*, 9 Cal 105

one place a suit can be instituted in any one of those places so specified (*d*) But where no place of payment is specified the suit must either be instituted at the place where the defendant resides or where the instrument was executed (*e*) If a note is actually executed and delivered at one place but is dated with reference to a different place the parties will be deemed to have agreed to treat the latter place as the place of contract and a suit will lie there (*f*) A suit will lie where a note negotiated or assigned (*g*) But a direction by an endorsee to pay at a particular place does not entitle the endorsee to sue at that place (*h*)

### ORDER I RULE 6

The plaintiffs may, at his option, join as parties to the suit all or any of the persons severally, or jointly and severally, liable on any contract, including parties to bills of exchange, hundis and promissory notes

Joinder of parties liable on same contract

### NOTES

This rule is confined to suits on contracts (*i*) The liability under a contract may be several or joint or joint and several In a suit under a negotiable instrument the holder is not bound to sue all the parties liable to him (*j*)

### ORDER VII RULE 16

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may pass such decree as it would have passed if the plaintiff had produced the instrument in court when the plaint was

Suits on lost negotiable instrument

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- (*d*) *Surajmal v Hudson*, 24 Mad 259  
 (*e*) *Raman v Gopalachari*, 31 Mad 223  
 (*f*) *Meenakshi Ginning & Pressing Co v Suramulu*, 28 Mad 19  
 (*g*) *Raghu v Gobind*, 22 Cal 451  
 (*h*) *Sew Baran v Ram Charita*, 1929 Cal 306, 119 I C 295  
 (*i*) *Krishnappa v Maung Hman*, 18 I C 181  
 (*j*) *Basantram v Kolatal*, 1 All 392; *Pestonji v Mirja Mahamad*, 3 Cal 541

presented and had at the same time delivered a copy of the instrument to be filed with the plaint

### NOTES

If a plaintiff bases his claim on a lost hundi or other negotiable instrument he must furnish security against possible claims (k) (vide notes to section 45A, N I Act)

### ORDER XXI RULE 34

1. Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment debtor neglects or refuses to obey the decree, the decree holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court

2. The courts shall thereupon cause the draft to be served upon the judgment debtor together with a notice requiring his objections (if any) to be made within such time as the court fixes in this behalf

3. Where the judgment debtor objects to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit

4. The decree holder shall deliver to the court a copy of the draft with such alterations (if any) as the court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force, and the Judge or such officer as may be appointed in this behalf shall execute the documents so delivered

5. The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely —

“C D, Judge of the court of (*or as the case may be*), for A B in a suit by E F against A B”

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same

**6.** The court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration

### NOTES

Execution of a compromise decree comes under the scope of this rule (1)

### ORDER XXI RULE 51

Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to further orders of the court

Attachment of negotiable instruments

### NOTES

For effective attachment actual seizure is necessary Notice to the debtor that he should not pay the amount due under the promissory note does not operate as an effective attachment (m)

### ORDER XXI RULE 76

Where the property to be sold is a negotiable instrument or a share in a corporation, the court may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker

Negotiable instruments and shares in corporations

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(1) *Aswini v Ramgopal*, 1926 Cal 975, 95 IC 179  
 (m) *Subramania v Chokkalinga*, 46 Mad 415, 1923 Mad 317, 44 MLJ 206, 72 IC 189, *Namagiri v Muthu*, 1928 Mad 940; 56 MLJ 70, 28 L W 565

**ORDER XXI RULE 80**

1. Where the execution of a document or the endorsement of the party in whose  
 Transfer of negotiable instrument and shares      name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officers as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party

2. Such execution or endorsement may be in the following form, namely —

“A B, by C D, Judge of the Court of      (or  
*as the case may be*), in a suit by E F against A B ”

3. Until the transfer of such negotiable instrument or share, the court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same, and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself

**ORDER XXXVII**

## Summary Procedure on Negotiable Instruments

Application of order      1. This order shall apply only to —

- (a) The High Courts of Judicature at Fort Williams, Madras and Bombay,
- (b) Repealed
- (c) The Chief Court in Sind,
- (cc) All Civil Courts (except Courts of Small Causes) in the districts of Chittagong, Dacca, Pabna and 24 Parganas, and

- \* (d) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, (XIV of 1882) have already been applied

## NOTES

In the exercise of the powers conferred upon the High Courts by section 122 C P Code the Lahore High Court has ruled that this order on summary proceeding shall apply to the Lahore High Court This has been held not *ultravires* (n) Clause (b) containing the Chief Court of Lower Burma stands repealed (n<sup>1</sup>) Clause (c) applies to Pakistan and Clause (cc) embodies Calcutta and Dacca High Courts amendments

2. (1) All suits upon bills of exchange, hundis, or promissory notes may, in case Institution of summary suits upon bills of exchange etc the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed, but the summons shall be in Form No 4 Appendix B or in such other form, as may be from time to time prescribed

(2) In any case in which the plaint and the summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend, and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree—

\* (a) for the principal sum due on the instrument and for interest calculated in accordance with the provision of section 79 or section 80, as the case may be, of the Negotiable Instruments Act, 1881, up to the date of the institution of the suit, or for the sum men-

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\* Vide notifications under section 538 of Act XIV of 1882 in the various lists of Local Rules and Orders

(n) *Bhondus Mal v Muhammad*, 8 Lah 156, 1927 Lah 174, 28 PLR 539  
(n<sup>1</sup>) Adaptation of Indian Laws Order, 1937.

\* Sub-clauses (a), (b) and (c) of clause (2) as also clause (3) were substituted by section 4 of the Negotiable Instruments (Interest) Act XXX of 1926

tioned, in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the court thinks fit, and

(b)' for such subsequent interest, if any, as the court may order under section 34 of this code, and

(c) for such sum for costs as may be prescribed Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way

(3) A decree passed under this rule may be executed forthwith

### NOTES

It is optional with the plaintiff of a suit on a negotiable instrument to take resort to the summary procedure laid down in Order 37. He may, if he so desires, seek relief also under the regular procedure. But if he decides to come under this order he must do so within one year from the time when the debt or the liquidated demand becomes payable as provided by Art 5, Schedule I of the Indian Limitation Act

Under the present rule if the leave to defend is refused by the court or is granted on conditions which the defendant fails to comply the allegations in the plaint shall be deemed to be admitted and the plaintiff shall become entitled to a decree (o). But these allegations in the plaint must be based on the terms of the instrument. Therefore, where the instrument is silent about the rate of interest the court will not be justified in passing a decree for more than 6% p c per annum simply because a higher rate has been alleged in the plaint (p). A suit on a Shahjog hundi lies under this order (q).

A suit in which alternative claims are made on a negotiable instrument or there is a claim for compensation under sections 32 and 117 (c) of the Negotiable Instruments Act will be maintainable under this order (r). But a defendant cannot set up a counter claim for damages caused to him by the plaintiff in such a summary suit (s). He may maintain a plea of set-off (t).

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- (o) *Ramanlal v Chumilal*, 54 Bom 268
  - (p) *Venkatachellapathi Nidhi v Nanjappa*, 64 M.L.J. 64
  - (q) *Jettha Devji v Sriram Moolchand*, 98 I.C. 78
  - (r) *Narandas v. Chandran*, 107 I.C. 218
  - (s) *Sethna v Ladak*, 8 I.C. 924, *Bihaller v Habibbhoj*, 120 I.C. 528
  - (t) *Indian Specie Bank v Nagindas*, 8 Bom L.R. 689



**3. (1)** The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application

(2) Leave to defend may be given unconditionally or subject to such terms as to payment in the court, giving security, framing and record issues or otherwise as the court thinks fit

#### NOTES

Where the defendant fails to show that the hundis were without consideration leave to defend should not be granted (*u*). The point for determination under this rule is whether or not a triable issue is disclosed on affidavit. A triable issue means a plea which is at least plausible (*v*)

**4.** After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court so to do, and on such terms as the court thinks fit

#### NOTES

The court can set aside a decree when the defendant alleges a promise by the plaintiff before the decree that he will not continue the proceedings (*w*)

**5.** In any proceeding under this order the court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings

(*u*) *Sedhlal v Murlidhar*, 1933 Lah 440

(*v*) *Syamsundar v Titagarh Paper Mills*, 32 CWN 125, 1928 Cal 123; 98 IC 82, *Olayatt v Ussan*, 1929 Mad 841, 82 IC 102

(*w*) *Joseph v Solano*, (1827) 18 WR 424, *Gopalanyar v Thiruvengadam*, 32 MLJ 503, 38 IC 481

shall be stayed until the plaintiff gives security for the costs thereof

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this order for the recovery of the amount of such bill or note

7. Save as provided by this order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner

## APPENDIX IV

### ON EVIDENCE

Relevant sections of the Indian Evidence Act I of 1877

**92.** When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms

Exclusion of evidence of oral agreement

*Proviso 1*—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law

*Proviso 2*—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies the court shall have regard to the decree of formality of the document

*Proviso 3*—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under, any such contract, grant or disposition of property, may be proved

*Proviso 4*—The existence of any distinct subsequent oral agreement to receive or modify any such contract, grant or disposition of property, may be

proved, except in cases in which the contract, grant or disposition of property, is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents.

*Proviso 5*—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved.

Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.

*Proviso 6*—Any fact may be proved which shews in what manner the language of a document is related to existing facts

**114.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case

Court may presume  
existence of certain facts

#### *Illustrations*

The Court may presume,

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it —

As to illustration (c) —A, the drawer of a bill of exchange, was a man of business, B, the acceptor was a young and ignorant person, completely under A's influence

**117.** No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or

Estoppel of acceptor of  
bill of exchange, bailee  
or licensee

licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license

*Explanation 1* —The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn

*Explanation 2* —If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor

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## APPENDIX V

### ON LIMITATION

Relevant provisions of the Indian Limitation  
Act (IX of 1908)

**2.** In this Act, unless there is anything repugnant  
Definitions in the subject or context,

(2) 'bill of exchange' includes a hundi and a  
'Bill of exchange' cheque,

(q) 'promissory note' means any instrument  
whereby the maker engages absolutely to pay a specified  
sum of money to another at a time therein limited, or  
on demand, or at sight

**3.** Subject to the provisions contained in sections  
Dismissal of suits etc 4 to 25 (inclusive), every suit  
instituted etc after period instituted, appeal preferred and  
of limitation application made, after the period  
of limitation prescribed therefor by the first schedule  
shall be dismissed, although limitation has not been set  
up as a defence

### NOTES

Whether a suit is within time must be decided primarily  
on the basis of the plaintiff's own pleading and not on the  
defence set up (a) and such defence need not be specifically  
pleaded (b)

**4.** Where the period of limitation prescribed for  
any suit, appeal or application ex-  
Where court is closed pires on a day when the court is  
when period expires closed, the suit, appeal or applica-  
tion may be instituted, preferred or made on the day  
that the court reopens

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(a) *Desai v Lachhram*, 1933 Lah 404; 147 I C 57

(b) *Vishweshar v Sadashiv*, 1926 Bom 54; 26 Bom L R 1456, 93 I C 930

**19. (1)** Where before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received

*Explanation I*—For the purposes of this section, an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than the person entitled to the property or right

*Explanation II*—For the purposes of the section, “signed” means signed either personally or by an agent duly authorised in this behalf

*Explanation III*—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right

## NOTES

An acknowledgment of liability, should the balance turn out to be against the person making it, is a sufficient acknowledgment. In probate proceedings, in answer to an objection that he was indebted to the estate, the respondent, in a petition signed by him, stated “that for the last five years he had opened current accounts with the deceased the alleged indebtedness does not affect his right to apply for probate” Held that it was a

sufficient acknowledgment of liability (*b*<sup>1</sup>) A payment made by one of the several judgment debtors, otherwise than as an agent of the co-judgment debtors does not save limitation except against the person making the payment (*b*<sup>2</sup>) Admission must be unqualified or qualified by a condition which is fulfilled (*b*<sup>3</sup>)

## THE FIRST SCHEDULE

### Art. 5.

Description of suit	Period of Limitation	Time from which the period begins
Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908 "where the provisions of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code"	One year	When the debt or liquidated demand becomes payable or when the property becomes recoverable

## NOTES

The words within the inverted comas have been added to this article by the Indian Limitation Act XXX of 1925 on the recommendation of the Civil Justice Committee (*c*) with the result that the decision of the Calcutta High Court that the article was not applicable to suit under Order 37 of the C P Code (*d*) stands overruled and the article is now applicable to such suits

### Art. 60.

For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable	Three years	When the demand is made
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(*b*<sup>1</sup>) *Moniram v Rupchand*, 33 Cal 1047, 10 CWN 874, 4 CLJ 94 (PC)

(*b*<sup>2</sup>) *Ashanullah v Dakhini*, 27 All 375

(*b*<sup>3</sup>) *Rajah Kaveli v Rajah Ranjiah*, 29 Mad 519

(*c*) Civil Justice Committee Report, pp 499, 490

(*d*) *Rabindra v Abdul*, 29 CWN 589, 52 Cal 954, 1925 Cal 781; 88 IC 400



## NOTES

A banker is a deposit<sup>ee</sup> (*e*) A suit to recover money left with a trader who is not a banker, under such circumstances as would make it the money of a customer if the deposit<sup>ee</sup> were a banker will be governed by this Article (*f*)

**Art. 62.**

For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use	Three years	When the money is received
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## NOTES

A suit by the real claimant against a benamdar in whose name a bond stood and who had realised the money due upon it, is governed by this Article (*g*)

**Art. 69.**

On a bill of exchange or promissory note payable at a fixed time after date	Three years	When the bill or note falls due
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## NOTES

This article applies to a bill which has been accepted and not dishonoured by non-acceptance

**Art. 70.**

On a bill of exchange payable at sight, or after sight, but not at a fixed time	Three years	When the bill is presented
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## NOTES

No action can be maintainable without the bill being presented (*h*) A bill at sight is not regarded as a bill payable on demand for the purpose of limitation as in the former case limitation runs from the date of presentment while in the latter case it runs from the date of the instrument (*i*)

(*e*) *Ishur v Jiban*, 16 Cal 25, *Perundevitayar v Nammalvar*, 18 Mad 390; *Jugglal v Kishenlal*, 37 All 292

(*f*) *Subramanian v Kadresan*, 39 Mad 1081, 30 M L J 245, 32 I C 965

(*g*) *Subbanna v Kunhanna*, 30 Mad 298, *Sundar v Fakir*, 25 All 62

(*h*) *Durga v Kalicharan*, 40 C L J 84

(*i*) Art 73 (*post*)

**Art. 71.**

On a bill of exchange accepted payable at particular place	Three years	When the bill is presented at that place
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**Art. 72.**

On a bill of exchange or promissory note payable at a fixed time after sight or after demand	Three years	When the fixed time expires
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**Art. 73.**

On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue	Three years	The date of the bill or note
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## NOTES

In all bills or notes payable on demand, the liability arises the moment the bills or notes are made (j) The article applies to the maker of a note and not to an endorser whose liability arises not on the note but out of the endorsement and, therefore, it cannot be earlier than the endorsement (k) A promissory note was accompanied by a letter from the debtor stating he would pay the principal and interest within one year, held that limitation would run after the expiration of the period mentioned in the letter (l)

**Art. 74.**

On a promissory note or bond payable by instalments	Three years	The expiration of the first term of payment as to the part then payable, and for the other parts, the expiration of the respective terms of payment
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(j) *Brojendra v Hindusthan Co-operative Society*, 44 Cal 978, *Durga v Kalicharan*, 40 CLJ 84, *Framroz v Mahamad*, 50 Bom 266; *Ganapat v Sopana*, 52 Bom 88 (FB)

(k) *Jagannadha v Lakshmana*, 1925 Mad 132, 47 MLJ 475

(l) *Jwalaprasad v Shamacharan*, 42 All 55, *Annamalai v Velayuda*, 39-Mad 129 (FB)

## NOTES

Where a bond stipulates for payment of the entire principal amount within a fixed period by several annual instalments and there is provision for payment of interest the bond is one payable by instalments and since there is no provision that default of one instalment will entitle the creditor to realise the whole amount due, the cause of action in respect of each instalment will arise on the date of each default under this article and the plaintiff can recover only those instalments which may fall due within three years before suit (*m*)

**Art. 75.**

On a promissory note or bond or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due

Three  
years

When the default is made, unless where the payee or the obligee waives the benefit of the provisions and, then when fresh default is made in respect of which there is no such waiver

## NOTES

The article applies to suits on bonds and promissory notes payable by instalments and not to applications for execution of an instalment decree (*n*) It is optional with the creditor to sue for the whole amount or to sue for the recovery of each instalment as it falls due If he elects to sue for the whole amount, the period of limitation runs from the date of the first default (*o*) and if he chooses to sue for the instalments not barred at the date of suit, the period of limitation is to be counted from the date on which each of those instalments falls due (*p*) Even though the debtor pays any interest on the sum defaulted, the limitation runs from the date of the default (*q*) Mere acceptance of an overdue instalment does not constitute waiver (*r*)

(*m*) *Goura v Ramcharan*, 1927 Oudh 539, 100 I C 655, 4 Luck 480

(*n*) *Ugranath v Lagonmoni*, 4 All 83

(*o*) *Sarat v Norendra*, 33 C W N 250, 1929 Cal 292

(*p*) *Ajadhia v Kunjlal*, 30 All 123, *Amolak v Bajjnath*, 35 All 455; *Mohonlal v Tikaram*, 41 All 104, 47 I C 926

(*q*) *Basanta v Nobin*, 53 Cal 277, 1926 Cal 789; 96 I C 594

(*r*) *Mohesh v Prasanna*, 31 Cal 83

**Art. 76.**

On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen

Three  
years

The date of delivery to the payee

**Art. 77.**

On a dishonoured foreign bill, where protest has been made and notice given

Three  
years

When the notice is given

**Art. 78.**

By the payee against the drawer, of a bill of exchange, which has been dishonoured by non-acceptance

Three  
years

The date of the refusal to accept

## NOTES

To attract the operation of this article the suit should be one based on the dishonoured instrument alone (s)

**Art. 79.**

By the acceptor of an accommodation bill against the drawer

Three  
years

When the acceptor pays the amount of the bill

**Art. 80.**

Suit on a bill of exchange, promissory note or bond not herein expressly provided for

Three  
years

When the bill, note or bond becomes payable

## NOTES

A document which recites "I shall pay you whenever you may demand after you attain the age of majority" is a promissory note, and a suit on the note is governed by this article (t) A suit based on a dishonoured hundi payable after a fixed date and

(s) *Padmalochan v Girish*, 46 Cal 168

(t) *Kuttiassan v Suppr*, 3 MLJ 199

not presented for acceptance but only for payment is governed by this article (*u*) A suit on a promissory note accompanied by a writing postponing the date of payment is governed by this article (*v*)

**Art. 159.**

For leave to appear and defend a suit under the Summary Procedure referred to in section 128 (2) (f) of the Civil Procedure Code	Ten days	When the summons is served
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NOTES

Summary Procedure is now laid down in order XXXVII of the C P Code

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(*u*) *Ram v Shadram*, 19 PR 1888

(*v*) *Annamalai v Velayuda*, 39 Mad 129, *Jawalaprasad v Bamacharan*, 42 All 55

## APPENDIX VI

### STAMP ACT

#### Relevant sections of the Indian Stamp Act

**2.** In this Act, unless there is something repugnant in the subject or context,—  
Definitions

1 “banker” includes a bank and any person acting  
Banker as a banker

2 “bill of exchange” means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also  
“Bill of exchange” a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for any sum of money

“Bill of exchange payable on demand” 3 “bill of exchange payable on demand” includes—

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen,

(b) an order for the payment of any sum of money weekly, monthly or at any other stated periods, and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn,

“Bond”

5 “bond” includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be,

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another, and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another

7 “cheque” means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than

on demand

11. “Duly stamped”, as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in the States

22 ‘Promissory note’ means a promissory as defined by the Negotiable Instrument Act, 1881,

Promissory note

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen

23 “Receipt” includes any note, memorandum or writing—

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment,  
and whether the same is or is not signed with the name of any person.

**3.** Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of amount indicated in that schedule as the proper duty therefor, respectively, that is to say—

(a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in the States on or after the 1st of July, 1899,

(b) every bill of exchange, payable otherwise than on demand or promissory note drawn or made out of the States on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in the States, and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of the States on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the States and is received in the States.

Provided that no duty shall be chargeable in respect of—

1 any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument,

#### NOTES

A bill of exchange is not cancelled merely because the



holder extends the time for payment in favour of the acceptor; and alteration in the date of payment made by the consent of the parties does not render the bill a new instrument so as to require the same to be stamped (a)

**10.** 1 Except as otherwise expressly provided in this Act, all duties with which any instrument are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions hereinafter contained, or,

(b) when no such provision is applicable thereto, as the State Government may by rule direct

2 The rules made under sub-section (1) may, among other matters, regulate,—

(a) in the case of each kind of instruments—the description of stamps which may be used,

(b) in the case of instruments stamped with impressed stamps—the number, of stamps which may be used,

(c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written

**11.** The following instruments may be stamped

Use of adhesive stamps with adhesive stamps, namely —

(a) Instrument chargeable with the duty of one anna or half an anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets,

(b) bills of exchange and promissory notes drawn or made out of the States;

(c) notarial acts

**12.** 1 (a) Whoever affixes any adhesive stamp

Cancellation of adhesive stamps

to any instrument chargeable with duty and which has been executed by any person shall, when affixing

such stamp, cancel the same so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has already been cancelled in manner aforesaid, cancel the same so that it cannot be used again

2 Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped

3 The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials of his firm with the true date of his so writing or in any other effectual manner

### NOTES

These provisions have been made to safeguard the revenue interest of the Government. The provisions are mandatory. Therefore, where in a promissory note out of four stamps only three were cancelled and one was not cancelled the document was held to be inadmissible (a)

**13.** Every instrument written upon paper stamped with an impressed stamp, shall be written in such manner that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument

Instrument stamped with impressed stamp how to be written

**14.** No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written

Only one instrument to be on the same stamp

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not

chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidence thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby

**19.** The first holder in the States of any bill of exchange payable otherwise than on demand, or promissory note drawn or made out of the States Bills, cheques and notes drawn out of the States shall, before he presents the same for acceptance or payment, or indorses, transfers, or otherwise negotiates the same in the States, affix thereto the proper stamp and cancel the same

Provided that—

(a) if, at the time any such bill of exchange payable otherwise than on demand, or note comes into the hands of any holder thereof in the States, the proper adhesive stamp is affixed thereto and cancelled in a manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as it relates to such holder, be deemed to have been duly affixed and cancelled,

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp

#### NOTES

A suit lies on a foreign promissory note which is admissible in evidence without any stamp being affixed thereto (b) A decree can be passed in British India on a promissory note executed in the Nizam's Dominions and stamped with British Indian Stamps as a note without stamp is not void in the Nizam's Dominion (c)

**20.** (1) When an instrument is chargeable with *ad valorem* duty in respect of any money expressed in

(b) *Ram Singh v Parumal*, 32 IC 582, *Mahomed v Mahomed*, 22 Mad 337

(c) *Dhondiram v Sadasuk*, 42 Bom 522

any currency other than that of the States, such duty shall be calculated on the value of such money in the currency of the States according to the current rate of exchange on the day of the date of the instrument

(2) The Central Government may from time to time, by notification in the official Gazette, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of the States for the purpose of calculating stamp duty, and such rate shall be deemed to be the current rate for the purpose of subsection (1).

**22.** Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject matter of such statement, be presumed, until the contrary is proved, to be duly stamped

**23.** Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein

**27.** The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein

**29.** In the absence of an agreement to the contrary, the expenses of providing the proper stamps shall be borne,—

(a) in the case of any instrument described in any of the following Articles of Schedule I, namely:—

No 13' (Bill of Exchange).

No 49 (Promissory note)

by the person drawing, making or executing such instrument

**30.** Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same

Obligation to give receipt in certain cases

**31.** (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector and the person bringing if applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable

Adjudication as to proper stamp

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of duty with which it is chargeable, are fully and truly set forth therein, and

may refuse to proceed upon any application until such abstract and evidence have been furnished accordingly.

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument by which it relates is chargeable, and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid

**32.** (1) When an instrument brought to the notice of the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by indorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in a manner aforesaid that such instrument is not so chargeable

(3) Any instrument upon which an indorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case

may be, and if chargeable with duty shall be receivable in evidence or otherwise and may be acted upon and registered as if it had been originally duly stamped

Provided that nothing in this section shall authorise the Collector to indorse—

(a) any instrument executed or first executed in the States and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be, or

(b) any instrument executed or first executed out of the States and brought to him after the expiration of three months after it has been first received in the States, or

(c) any instrument chargeable with the duty of one anna or half an anna, or any bill of exchange or promissory note, when brought to him, after drawing, execution thereof, on paper not duly stamped

### NOTES

The certificate issued by the Collector is final and cannot be questioned by the Civil Courts (d) When the Collector indorsed an unstamped promissory note it was held to be admissible in evidence (e)

**33.** (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same

**35.** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to

Examination and impounding of instruments  
Instruments not duly stamped inadmissible in evidence.

(d) *Gangaram v Malik*, 28 SLR 266

(e) *Girdhari v Jagannath*, 3 All 115, *Devachand v Hirachand*, 13 Bom 449 (FB)

receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped

Provided that—

(a) Any such instrument not being an instrument chargeable with the duty of one anna or half an anna only, or a bill of exchange or promissory note, shall, subject to, all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion,

(c) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act

### NOTES

A letter undertaking repayment of a loan can be sued upon though unstamped on payment of penalty (f)

**36.** Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped

Admission of instrument where not to be questioned

**40.** When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna or

Collector's power to stamp instruments impounded



half an anna only or a bill of exchange or promissory note, he shall adopt the following procedure —

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by indorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be,

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees, or, if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section

(2) Every certificate under clause (a) of subsection (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein

(3) Where an instrument has been sent to the Collector under section 38, subsection (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer

### NOTES

If the certificate is without jurisdiction, it is not conclusive (g)

**41.** If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna (or half an anna) only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector

Instruments unduly stamped by accident

within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed

**47.** Where any bill of exchange or promissory note chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner herein before provided, may pay the sum payable upon such bill, or note and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill or note shall, so far as it respects the duty, be deemed good and valid

Power of payer to stamp bills, promissory notes received by him unstamped

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill or note

**49.** Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely —

Allowance for spoiled stamps

\* \* \* \*

(c) in the case of bills of exchange, payable otherwise than on demand or promissory notes—

(1) the stamp on any such bill of exchange, signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands

(3) the stamp used or intended to be used for any such bill of exchange, or promissory note signed by, or on behalf of, the drawer thereof, but which, from any omission or error, has been spoiled or rendered useless, although the same, being a bill of exchange, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill or note

## 62. (1) Any person—

Penalty for executing etc instrument not duly stamped. (a) drawing, making, issuing, indorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating any bill of exchange, payable otherwise than on demand or promissory note without the same being duly stamped, or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being stamped, or

(c) voting or attempting to vote any proxy not duly stamped,

shall for every such offence be punishable with fine which may extend to five hundred rupees

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty

2 If a share warrant is issued, without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees

**63.** Any person required by section 12 to cancel an adhesive stamp and failing to  
Penalty for failure to cancel adhesive stamp cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees

Penalty for omission to comply with provisions of section 27 **64.** Any person, who with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act,

shall be punishable with fine which may extend to five thousand rupees

**67.** Any person drawing or executing a bill of exchange payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped, the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees

Penalty for not drawing full number of bills or marine policies purporting to be in sets

**68.** Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, or,

Penalty for post-dating bills and for other services to defraud the revenue

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same, or,

(c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act, or any other law for the time being in force,

shall be punishable with fine which may extend to one thousand rupees

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## GOVERNMENT OF INDIA RULES

### Finance Department (Central Revenues)

Description of Stamps to be used

(*Published in the Gazette of India dated 9th May, 1925*),

(as amended up to March, 1934)

No C-63 Stamps 25 —In exercise of the powers conferred by the Indian Stamp Act, 1899, (11 of 1899), and in supersession of the notification of the Government of India in the Finance Department, No 1140-F, dated the 14th August, 1914, and of all notifications amending the same, the Governor General in Council is pleased to make the following rules namely —

## RULES UNDER THE INDIAN STAMP ACT, 1899

### CHAPTER I

#### PRELIMINARY

1. These rules may be called the Indian Stamp Rules, 1925

Short title	Definition	(a) "The Act" means the Indian Stamp Act, 1899 (11 of 1899)
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(b) "Section" means a section of the Act

(c) "Schedule" means a schedule of the Act

(d) "Superintendent of Stamps" means the superintendent of Stamps, Madras, Bombay, Karachi, Rangoon or Nagpur and includes the Financial Commissioner, Punjab, and any other officer appointed by the State Government to perform the functions of a Superintendent of Stamps

Description of Stamps.	3. (1) Except as otherwise provided by the Act or by these rules —
------------------------	--

(1) all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamps issued by Government for the purposes of the Act, and

(11) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument, shall not be used for an instrument of any other kind

(2) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely —

- (a) impressed stamps, and
- (b) adhesive stamps

## CHAPTER II

## OF IMPRESSED STAMPS

4. (1) Hundis, other than hundis which may be stamped with an adhesive stamp under section 11, shall be written on paper as follows, namely —
- Hundis.

(a) A hundi payable otherwise than on demand, but not at more than one year after date or sight, and for an amount not exceeding rupees thirty thousand in value, shall be written on paper on which a stamp of the proper value bearing the word “hundi” has been engraved or embossed

(b) A hundi for an amount exceeding rupees thirty thousand in value, or payable at more than one year after date or sight, shall be written on paper supplied for sale by the Government, to which a label has been affixed by the Collector of Stamp Revenue, Calcutta, or a Superintendent of Stamps, and impressed by such officer in the manner prescribed by rule 11

(2) Every sheet of paper on which a hundi is written shall be not less than  $8\frac{5}{8}$  inches long and  $5\frac{1}{8}$  inches wide and no plain paper shall be joined thereto

(3) The provisions of sub-section (1) of rule 7 shall apply in the case of hundis

5. A promissory note or bill of exchange shall, except as provided by section 11 or by rules 13 and 17, be written on paper on which a stamp of the proper value, with or without the word ‘hundi’, has been engraved or embossed
- Promissory note and bill of exchange.

6. Every other instrument chargeable with duty shall, except as provided by section 11 or by rules 10, 12 and 13, be written on paper on which a stamp of proper value, not bearing the word ‘hundi’ has been engraved or embossed
- Other instruments.

7. (1) Where two or more sheets of papers on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheets so used
- Provision where single sheet of paper is insufficient

(2) Where a single sheet of paper, not being paper bearing an impressed hundi-stamp, is insufficient to admit of the entire instrument being written on the side of the paper which bears

the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument

Provided that in every such case a substantial part of the instrument shall be written on the sheet which bears the stamp before any part is written on the plain paper subjoined

8. The duty on any instrument which is chargeable with a duty of one anna under the Act or of two annas under articles 5, 19, 36, 37, 43, 49 and 52 of Schedule 1, may be denoted by a coloured impression marked on a skeleton form of such instrument by the Collector of Stamp Revenue, Calcutta or the Superintendent of Stamps

One anna and two annas impressed stamps

9. The officers specified in Appendix 1 and any officer appointed in this behalf by the State Government are empowered to affix and impress or perforate labels, and each of them shall be deemed to be "the proper officer" for the purposes of the Act and of these rules

"The proper officer"

Affixing and impressing or perforating of labels by proper officer permissible in certain cases

10. Labels may be affixed and impressed or perforated by the proper officer in the case of the following instruments namely —

(1) those specified in Appendix 11, and the counterparts thereof other than instruments on which the duty is less than two annas, and

(11) those specified in Appendix 111, when written in any European language, and accompanied, if the language is not English by a translation in English

Provided that the State Government may direct that this rule shall apply, subject to any conditions which it may prescribe, to agreements or memoranda of agreement such as are specified in Appendix 111, when written in any oriental language

11. (1) The proper officer shall, upon any instrument specified in rule 10 being brought to him before it is executed, and upon application being made to him, affix thereto a label or labels of such value as the applicant may require and pay for, and impress or perforate such label or labels by means of a stamping-machine, or a perforating machine, and also stamp or write on the face of the label or labels the date of impressing or perforating the same In the case of instruments, written

Mode of affixing and impressing labels



on parchment, the labels shall be further secured by means of metallic eyelets

(2) On affixing any label or labels under this rule, the proper officer shall where the duty amounts to rupees five or upwards, write on the face of the label or labels his initials, and where the duty amounts to rupees twenty or upwards, shall also attach his usual signature to the instrument immediately under the label or labels

(3) The following officers may discharge the functions of the proper officer under sub-rule (2), namely —

(i) Any principal assistant of the proper officer empowered by the State Government in this behalf

(ii) In Calcutta, the Deputy Collector and the Superintendent of the Stamp Department of the Collector's office,

(iii) In Karachi, the Assistant Superintendent of Stamps; and

(iv) In Lahore, the head or any other Assistant for the time being in charge of the stamping work in the Financial Commissioner's Office

**12.** (1) Instruments executed out of the State and requiring to be stamped after their receipt in the States (other than instruments which, under section 11 or rule 13, may be stamped with adhesive stamps) shall be stamped with impressed labels

(2) Where any such instrument as aforesaid is taken to the Collector under section 18 sub-section (2), the Collector, unless he is himself the proper officer, shall send the instrument to the proper officer, remitting the amount of duty paid in respect thereof, and the proper officer shall stamp the instrument in the manner prescribed by rule 11, and return it to the Collector for delivery to the person by whom it was produced

### CHAPTER III

#### OF ADHESIVE STAMPS

**13.** The following instruments may be stamped with adhesive stamps namely —

(a) Bill of exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed one anna for each part of the set

(b) Transfer of debentures of public companies and associations

(c) Instruments chargeable with duty under Articles 5 (a) and (b) and 43 of Schedule 1

(d) Copies of maps and plans and printed copies when chargeable with duty under Article 24 of Schedule 1

(e) Instruments chargeable with stamp duty under Article 47 of Schedule 1

(f) Instruments chargeable with stamp duty under Articles 19, 36, 37, 49 (a) (ii) and (iii) and 52 of Schedule 1

**13-A.** Notwithstanding anything contained in these rules whenever the stamp duty payable under the Act in respect of any instrument cannot be paid exactly by reason of the fact that the necessary stamps are not in circulation, the amount by which the payment of duty shall on that account be in defect shall be made up by the affixing of one anna and half-anna adhesive stamps such as are described in rule 16, provided that the State Government may direct that instead of such stamps adhesive court-fee stamps shall be used for the purpose

**14.** When any instrument of transfer in a company or association is written on a sheet of paper on which a stamp of the proper value is engraved or embossed and the value of the stamp so engraved or embossed is subsequently, in consequence of a rise in the value of such shares, found to fall short of the amount of duty chargeable under Article 62 (a) of Schedule 1, one or more adhesive stamps bearing the words "Share transfer" may be used to make the amount required

**15.** When adhesive stamps are used to indicate the duty chargeable on entry as an Advocate, Enrolment of advocates, Vakils or Attorneys, Vakil or Attorney on the roll of any High Court such stamps shall be affixed under the Superintendence of a Gazetted Officer of the High Court who shall obtain the stamp from the Superintendent of Stamps or other officer appointed in this behalf by the State Government and account to him for it. Such Gazetted Officer shall, after affixing the stamp, write on the face of it his usual signature with the date thereof

**16.** Except as otherwise provided by these rules the adhesive stamp used to denote duty shall be the requisite number of stamps

(i) bearing the words "Four annas" or "Two annas" or "One anna" or "Half anna" and

(ii) (a) in the case of instruments executed elsewhere than in Burma, bearing the word "Inland Revenue" or when the instrument has been executed elsewhere than in Burma bearing

the word "Inland Revenue" or when the instrument has been executed in Bihar and Orissa, the "B and O"

(b) in the case of instruments executed in Burma, inscribed for use either for postage or for revenue or both for postage and revenue

*India Government notification No 2 of 3rd March 1934*

(Government of India warns the public that with effect from 1st April 1934, separate stamps will be used for (a) postage and (b) revenue purposes respectively Documents coming under arts 1, 13, 19, 28, 36, 47, 49, 52, 53 and 60 of Sch 1, shall be stamped with revenue stamps of  $\frac{1}{2}$  anna, 2 annas or 4 annas as the case may be Postage stamps used will render them invalid)

**17.** The following instruments when stamped with adhesive stamps shall be stamped with the Special adhesive stamp to be used in certain cases following description of such Stamps namely —

(a) Bills of exchange, cheques, promissory notes drawn or made out of the State and chargeable with a duty of more than one anna with stamps bearing the words "Foreign bill "

(b) Separate instruments of transfer of shares and transfers of debentures of Public Companies and Associations with stamps bearing the words "share transfer "

(c) Entry as an advocate, vakil or attorney on the roll of any High Court, with stamps bearing the word "Advocate" "Vakil," or "Attorney," as the case may be

(d) Notarial acts with foreign bill stamps bearing the word "Notarial "

(e) Copies of maps or plans and printed copies certified to be true copies with court-fee stamps

(f) Instruments chargeable with stamp duty under Articles 5 (a) and (b) or 43 of Schedule 1 with stamps bearing the words "Agreement" or "Brokers' Note" respectively

(g) Instrument chargeable with stamp duty under Article 47 of Schedule 1 with stamps bearing the word "Insurance "

## CHAPTER IV

### MISCELLANEOUS

**18.** When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by endorsement that it is duly stamped

Provision for cases in which improper description of stamps is used

Provided that where the stamp borne on the instrument is postage stamp and the proper description of stamp is a stamp bearing the words "Indian Revenue" or the words "Revenue B & O" the Collector shall so certify the instrument if the instrument was executed before, and shall not so certify if it was executed on or after the 1st April, 1935

**19.** The Collector may require any person claiming a refund or renewal under Chapter V of the Act, Evidence as to circumstances of claim to refund or renewal or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also if he thinks fit, call for the evidence of witness in support of the statement set forth in any such deposition or affidavit

**20.** When an application is made for the payment under Chapter V of the Act, of an allowance in respect of a stamp which has been spoiled or misused or for which the applicant has no immediate use or on renewal of a debenture and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application, then, if the amount or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps or other officer appointed in this behalf by the State Government for destruction

**21.** When the Collector makes a refund under section 55 he shall cancel the original debenture by writing on or across it the word "Cancelled" and his usual signature with the date thereof

Mode of cancelling original debenture on refund under section 55

**22.** On the conviction of any offender under the Act, the Collector may grant to any person who appears to him to have contributed thereto a reward not exceeding such sum as the State Government may fix in this behalf

Rewards

## APPENDIX I

“Proper officers” within the meaning of Rule 9

- 1 The Superintendent of Stamps
- 2 The Superintendent of Stamps (Political Resident) Aden
- 3 The Collector of Stamp Revenue, Calcutta

Article	Description of Instrument	Proper stamp duty
5	Agreement of Memorandum of an Agreement (a) of relating to the sale of a bill of exchange	Imperial For Bombay, Punjab  Two annas Four annas
12	Bill of Exchange (as defined by Section (2) not being a Bond, bank-note or currency note— (b) where payable otherwise than on demand, but not more than one year after date or sight,—	For Bengal, Madras, Central Provinces, United Provinces, and Assam  Three annas





## STAMP ACT—Contd

Article	Description of Instrument	Proper stamp duty
42	<p>Notariable act, that is to say, any instrument endorsement, note, attestation, certificate or entry not being a Protest (No 50) made or signed by a Notary Public in the execution of the duties of his office or by any other lawfully acting as a Notary Public</p> <p>Order for the payment of money See Bill of Exchange (No 13)</p> <p>Promissory note as defined by section 2 (22)</p> <p>(a) When payable on demand— (i) when the amount of value does not exceed Rs 250 (ii) when the amount or value exceeds Rs 250 but does not exceed Rs 1,000 (iii) in any other case</p>	<p>One rupee For Bombay, Bengal, Punjab, Assam, United Provinces—Two rupees For Madras—One rupee and eight annas</p>
49	<p>Promissory note as defined by section 2 (22)</p> <p>(a) When payable on demand— (i) when the amount of value does not exceed Rs 250 (ii) when the amount or value exceeds Rs 250 but does not exceed Rs 1,000 (iii) in any other case</p>	<p>One anna Two annas Four annas</p>
50	<p>Protest of Bill or Note, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or a promissory note</p>	<p>The same duty as a bill of exchange (No 13) for the same amount payable otherwise than on demand One rupee For Bombay, Bengal, Madras, Punjab, Assam, United Provinces Two rupees</p>



## APPENDIX VII

### THE PROMISSORY NOTES (STAMP) ACT (XI OF 1926)

*An Act to provide for the validation of certain promissory notes*

Whereas it is expedient to provide for the validation of certain promissory notes stamped with postage stamps of the denomination of two or four annas, it is hereby enacted as follows —

(1) This Act may be called the Promissory Notes  
Short title and extent (Stamp) Act, 1926

(2) It extends to the whole of India, except Part  
B States

2. A promissory note payable on demand for an  
Validation of certain amount exceeding two hundred and  
promissory notes fifty rupees, executed after the  
30th day of September, 1923 and  
before the 5th day of January, 1925, and stamped with  
an adhesive stamp or adhesive stamps inscribed for  
postage and of the value required by the law in force  
at the time the promissory note was executed, shall not  
by reason only of the fact that the stamp or the stamps  
or any of them is or are of a description other than that  
required by such law, be deemed for any of the purposes  
of the Indian Stamp Act, 1899, or of the rules made  
there under, not to have been duly stamped

### NOTES

The Act only validates promissory notes sufficiently stamped but with stamps of wrong description. It does not intend to validate documents insufficiently stamped (a)

## APPENDIX VIII

### THE INDIAN COMPANIES ACT, VII OF 1913 AS AMENDED UP TO 1936

#### *Provisions applicable to Negotiable Instruments*

**89.** A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority express or implied

Bills of exchange and promissory notes

## APPENDIX IX

### THE BILLS OF EXCHANGE ACT, 1882.

(45 and 46 Vict C 61 )

Being an Act to codify the law relating to Bills of Exchange,  
Cheques, and Promissory Notes

*Received the Royal Assent, 18th August, 1882*

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Commons, in this present Parliament assembled and by the authority of the same, as follows —

#### PART I

##### PRELIMINARY

1. This Act may be cited as the Bills of Exchange Act,  
Short title 1882

Interpretation of terms 2. In this Act, unless the context  
otherwise requires,

“Acceptance” means an acceptance completed by delivery  
or notification

“Action” includes counter-claim and set off

“Banker” includes a body of persons whether incorporated  
or not who carry on the business of Banking

“Bankrupt” means the person in possession of a bill or note  
which is payable to bearer

“Bill” means bill of exchange, and “note” means promissory  
note

“Delivery” means transfer of possession, actual or construc-  
tive, from one person to another

“Holder” means the payee or indorsee of a bill or note who  
is in possession of it, or the bearer thereof

“Indorsement” means an indorsement completed by delivery

“Issue” means first delivery of a bill or note, complete in  
form to a person who take it as a holder

“Person” includes a body of persons whether incorporated  
or not

“Value” means valuable consideration

“Written” includes printed, and “writing” includes print

## PART II

## BILLS OF EXCHANGE

*Form and Interpretation*

**3.** (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to order of a specified person, or to bearer

*Bills of exchange defined*

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount or (b) a statement of the transaction which gives rise to the bill, is unconditional

(4) A bill is not invalid by reason

(a) that it is not dated

(b) that it does not specify the value given, or that any value has been given therefor

(c) that it does not specify the place where it is drawn or the place where it is payable

**4.** (1) An inland bill is a bill which is, or on the face of it purports to be, (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein

*Indian and foreign bill*

Any other bill is a foreign bill

For the purposes of this Act, "British Islands" mean any part of the United Kingdom of Great Britain and Ireland the Islands of Man, Guernsey, Jersey, Alderney and Sark, and the Islands adjacent to any of them being part of the dominions of Her Majesty

(2) Unless the contrary appears, on the face of the bill, the holder may treat it as an inland bill

**5.** (1) A bill may be drawn payable to, or to the order of, the drawer or it may be drawn payable to, or to the order of the drawee

*Effect where different parties to bill are the same person*

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person not having capacity to contract, the holder may treat the instrument, at his option either as a bill of exchange or as a promissory note

**6.** (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty  
 Address to drawee

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange

**7.** (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty  
 Certainty required as to payee

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one or two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer

**8** (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable  
 What bills are negotiable

(2) A negotiable bill may be payable either to order or to bearer

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it should not be transferable

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless to him or his order at his option

**9.** (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—  
 Sum

(a) With interest

(b) By stated instalments

(c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due

(d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of bill, and if the bill is undated from the issue thereof

**10.** (1) A bill is payable on demand—

(a) which is expressed to be payable on demand, or at sight, or on presentation, or

(b) in which no time for payment is expressed

(2) Where a bill is accepted or indorsed when it is overdue, it shall as regard the acceptor who so accepts or any indorser who so indorses it, be deemed a bill payable on demand,

**11.** A bill is payable at a determinable future time within

Bill payable at a future time      the meaning of this Act which is expressed to be payable—

(1) At a fixed period after date or sight

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect

**12.** Where a bill expressed to be payable at a fixed

period after date is issued undated, or  
 Omission of date in bill payable after date or acceptance after sight      where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance and the bill shall be payable accordingly

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted has been the true date

**13.** (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement, as the case may be

Presumption as to date  
being true date

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday

Ante-dating and post-dating

**14.** Where a bill is not payable on demand the day on which it is falls due is determined as follows

Computation of time  
of payment

(1) Three days, called days of grace, are in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace Provided that

(a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public fast or thanksgiving day the bill is, except in the case hereinafter provided for, due and payable on preceding business day

Day of grace

(b) When the last day of grace is a Bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank holiday, the bill is due and payable on the succeeding business day

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment

(3) Where a bill is payable at a fixed period after sight the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery

(4) The term "month" in a bill means calendar month

**15.** The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment Such person is called the referee in case of

Case of need

need It is in the option of the holder to resort to the referee in case of need or not, as he may think fit

Special stipulation by drawer restricting liability **16** The drawer of a bill, and any indorser may insert therein an express stipulation—

- (1) Negating or limiting his own liability to the holder
- (2) Waiving as regards himself some or all of the holder's duties

Definition and requisites of acceptance **17.** (1) The acceptance of bill is the signification by the drawee of his assent to the order of the drawer

Requisites of form (2) An acceptance is invalid unless it complies with the following conditions, namely —

- (a) It must be written on the bill and be signed by the drawee The mere signature of the drawee without additional words is sufficient
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money

Time for acceptance **18** A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently

Date of acceptance after previous dishonour accepts it, the holder, in the absence of any different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance

General and qualified acceptances **19.** (1) An acceptance is either (a) general or (b) qualified

(2) A general acceptance assents without qualification to the order of the drawer A qualified acceptance in express terms varies the effect of the bill as drawn

In particular an acceptance is qualified which is—

- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated



(b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn,

(c) local, that is to say, an acceptance to pay only at a particular specified place,

An acceptance, to pay at a particular place, is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere,

(d) qualified as to time,

(e) the acceptance of some one or more of the drawees but not of all

**20.** (1) Where a simple signature on a blank stamped

Inchoate instruments paper is delivered by the signer in order that it may be converted into a bill, it operates as prima facie authority to fill it up as a complete bill for any amount the stamp will cover using the signature for that of the drawer, or the acceptor, or an indorser, and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given Reasonable time for this purpose is a question of fact

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given

**21.** (1) Every contract on a bill, whether it be the drawer's, the acceptor's or an indorser's

Delivery to complete contract is incomplete and revocable, until delivery of the instrument in order to give effect thereto

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing as the case may be

By whom

(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill

**Conditional delivery.**

But if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser a valid and unconditional delivery by him is presumed until the contrary is proved

**Presumption as to delivery.**

### CAPACITY AND AUTHORITY OF PARTIES

**22.** (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract

**Capacity of parties**

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations

(2) Where a bill is drawn or indorsed by an infant, minor or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive, payment of the bill, and to enforce it against any other thereto

**23.** No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such provided that—

**Signature essential to liability**

(1) where a person signs a bill in trade or assumed name, he is liable thereon as if he had signed it in his own name

(2) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm

**24.** Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom

**Forged or unauthorized signature**

it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority

Provided that nothing in this section shall effect the ratification of an unauthorised signature not amounting to a forgery

**25.** A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent so signing was acting within the actual limits of his authority

**26.** (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in representative character, he is not personally liable thereon, but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability

(2) In determining whether a signature on a bill is that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted

#### THE CONSIDERATION FOR A BILL

Value and holder for value. **27.** (1) Valuable consideration for a bill may be constituted by—

- (a) any consideration sufficient to support a simple contract,
- (b) an antecedent debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who become parties prior to such time

(3) Where the holder of a bill has lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien

**28.** (1) An accommodation party to a bill is a person who has signed a bill as a drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person

(2) An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not

**29.** (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it under the following conditions, namely—

- (a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact
- (b) that he took the bill in good faith and for value and that at the time the bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder

**30.** (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value

(2) Every holder of a bill is prima facie deemed to be a holder in due course but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill

#### NEGOTIATION OF BILLS

**31.** (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill

(2) A bill payable to bearer is negotiated by delivery

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability

Requisites of a valid indorsement

**32.** An indorsement in order to operate as a negotiation must comply with the following conditions namely —

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally does not operate as a negotiation of the bill

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive

**33.** Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer and payment to the indorsee is valid whether the condition has been fulfilled or not

Conditional indorsement

Indorsement in blank, and special indorsement

**34.** (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person

**35.** (1) An indorsement is restrictive which prohibits the further negotiation of the bill or Restrictive indorsement which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection "

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same right and subject to the same liabilities as the first indorsee under the restrictive indorsement

**36.** (1) Where a bill is negotiable in its origin it continues to be negotiable until it has Negotiation of overdue bill been (a) restrictively indorsed, or (b) discharged by payment or otherwise

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time What is an unreasonable length of time for this purpose is a question of fact

(4) Except where an indorsement bears date of the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of

dishonour, but nothing in this sub-section shall affect the right of a holder in due course

**37.** Where a bill is negotiated back to the drawer, or to a party already liable thereon, or to the acceptor, such party may, subject to the provisions of this Act, re-issue or further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable

**38.** The rights and powers of the holder of a bill are as follows —

(1) He may sue on the bill in his own name

(2) Where he is holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill

(3) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good complete title to the bill, and (b) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge of the bill

#### GENERAL DUTIES OF THE HOLDER

**39.** (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has no time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawer and indorsers

**40.** (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged

(3) In determining what is reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case

Rules as to presentment for acceptance and excuses for non-presentment

**41.** (1) A bill is duly presented for acceptance which is presented in accordance with the following rules —

- (a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue
- (b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only
- (c) Where the drawee is dead, presentment may be made to his personal representative
- (d) Where the drawee is bankrupt, presentment may be made to him or to his trustee
- (e) Where authorised by agreement or usage, a presentment through the post office is sufficient

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

- (a) Where the drawee is dead or is bankrupt or is a fictitious person or person not having capacity to contract by bill
- (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected
- (c) Where although the presentment has been irregular, acceptance has been refused on some other ground

**42.** When a bill is duly presented for acceptance and is not accepted within the customary time the person presenting it must treat it as dishonoured by non-acceptance If

Non-acceptance



he do not, the holder shall lose his right of recourse against the drawer and indorsers

Dishonour by non-acceptance and its consequences

**43.** (1) A bill is dishonoured by non-acceptance—

(a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained or

(b) when presentment for acceptance is excused and the bill is not accepted

(2) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary

**44.** (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance

Duties as to qualified acceptance

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to balance

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not, within a reasonable time, express his dissent to the holder he shall be deemed to have assented thereto

**45.** Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented, the drawer and indorser shall be discharged

Rule as to presentment for payment

A bill is duly presented for payment which is presented in accordance with the following rules —

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due

(2) Where the bill is payable on demand, then subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable

In determining what is a reasonable time, regard shall be had to the nature of the bill the usage of trade with regard to similar bills, and the facts of the particular case

(3) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf 11 with the exercise of reasonable diligence such person can there be found

(4) A bill is presented at the proper place —

(a) Where no place of payment is specified but the address of the drawee or acceptor is given in the bill, and the bill is there presented

(b) Where a place of payment is specified in the bill and the bill is there presented

(c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known

(d) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence, no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found

(8) Where authorised by agreement or usage, a presentment through the post office is sufficient

**46.** (1) Delay in making presentment for payment is excused when the delay is caused by

Excuse for delay or  
non-presentment for pay-  
ment

circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence When the cause of delay ceases to operate, presentment must be made with reasonable diligence

(2) Presentment for payment is dispensed with,—

(a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment

(b) Where the drawee is a fictitious person

(c) As regards the drawer where the drawee, or acceptor is not bound as between himself and the drawer, to accept or pay the bill and the drawer has no reason to believe that the bill would be paid if presented

(d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented

(e) By waiver of presentment, express or implied

**47.** (1) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder

**48.** Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged. Provided that—

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission

(2) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of subsequent dishonour by non-payment unless the bill shall, in the meantime, have been accepted

**49.** Notice of dishonour in order to be valid and effectual, must be given in accordance with the following rules —

Rules as to notice of dishonour

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser, who, at the time of giving it, is himself liable on the bill

(2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not

(3) Where the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it ensures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given

(5) The notice may be given in writing or by personal communication and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and invalidated by verbal communication. A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby

(8) When a notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf

(9) Where the drawee or indorser is dead and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them unless one of them has authority to receive such notice for the others

(12) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter

In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—

- (a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in the time to reach the latter on the day after the dishonour of the bill,
- (b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, there by the next post thereafter

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to the principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder

(14) Where a party to a bill receives due notice of dishonour he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the post office

**50.** (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence

(2) Notice of dishonour is dispensed with—

- (a) When, after the exercise of reasonable diligence notice, as required by this Act, cannot be given to or does not reach the drawer or indorser sought to be charged
- (b) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived or after the omission to give due notice
- (c) As regards the drawer in the following cases, namely
  - (1) where the drawer and drawee are the same person,
  - (2) where the drawee is a fictitious or a person not having capacity to contract,
  - (3) where

the drawee is the person to whom the bill is presented for payment, (4) where the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment

- (d) As regards the indorser in the following cases, namely  
 (1) where the drawer is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation

**51.** (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted  
 Noting of inland bill for non-acceptance or non-payment, as the case may be, but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear, on the face of it to be foreign bill, protest thereof in case of dishonour is unnecessary

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment

(4) Subject to the provisions of this Act, when a bill is noted or protested, it may be noted on  
 7 and 8 Geo 5 C 48 the day of dishonour and must be noted not later than the next succeeding business day. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers

(6) A bill must be protested at the place where it is dishonoured

Provided that—

- (a) When a bill is presented through the post office and returned by post dishonoured, it may be protested

at the place to which it is returned and on the day of its return if received during business hours, and if not received during hours, then not later than the next business day

- (b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary

(7) A protest must contain a copy of the bill, and be signed by the notary making it, and must specify—

- (a) the person at whose request the bill is protested  
 (b) the place and date of protest, the cause or reason for protesting the bill, the demand made and the answer given, if any, or the fact that the drawer or acceptor could not be found

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof

(9) Protest is dispensed with by any circumstances which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence

**52.** (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable

Duties of holder as regards drawee or acceptor

(2) When by the terms of a qualified acceptance presentment for payment is required the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures

(3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him

(4) Where the holder of a bill presents it for payment he should exhibit the bill to the person from whom he demands

payment, and when a bill is paid, the holder shall forthwith deliver it up to the party paying it

### LIABILITIES OF PARTIES

**53.** (1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee  
 Funds in hands of drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument This sub-section shall not extend to Scotland

(2) In Scotland where the drawee of a bill has in his hand funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented of the drawee

**54.** The acceptor of a bill, by accepting it—  
 Liability of acceptor

(1) Engages that he will pay it according to the tenor of his acceptance

(2) Is precluded from denying to holder in due course

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill,

(b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement

(c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement

**55.** (1) The drawer of a bill by drawing it—  
 Liability of drawer or indorser

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken,

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse



(2) The indorser of a bill by indorsing it—

- (a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or a subsequent indorsee who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken,
- (b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements,
- (c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto

**56** Where a person signs a bill otherwise than as drawer

Stranger signing bill  
liable as indorser

or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course

Measure of damages  
against parties to dis-  
honoured bill

**57.** Where a bill is dishonoured, the measures of damages, which shall be deemed, to be liquidated damages, shall be as follows —

(1) the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

- (a) the amount of the bill
- (b) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case,
- (c) the expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder

Re-exchange

may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment

(3) Where by this Act interest may be recovered as damages, such interest may, if justice requires it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate, as interest proper

**58.** (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery and transferee"

(2) A transferor by delivery is not liable on the instrument

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless

#### DISCHARGE OF BILL

**59.** 1 A bill is discharged by payment in due course by Payment in due course or on behalf of the drawee or acceptor "Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective

(2) Subject to the provisions hereinafter contained, when Payment by drawer or a bill is paid by the drawer or an indorser indorser it is not discharged, but

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill

(b) Where a bill is paid by an indorser or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged

**60.** When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in ordinary course of business, it is not incumbent on the banker to show that Banker paying demand-draft where an indorsement is forged

the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority

**61.** When the acceptor of a bill of exchange is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged  
Accepter or holder at maturity

**62.** (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged  
Express waiver or renunciation

The renunciation must be in writing, unless the bill is delivered up to the acceptor

(2) The liabilities of any party to a bill may, in like manner, be renounced by the holder before, at, or after its maturity but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation

**63.** (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged  
Cancellation

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who had a right of recourse against the party whose signature is cancelled, is also discharged

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative, but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority

**64.** (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers  
Alteration of bill

Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor

(2) In particular the following alterations are material, namely alteration of the date, the sum payable, the time of payment, and, where a bill has been accepted generally addition of a place of payment without the acceptor's assent

#### ACCEPTOR AND PAYMENT FOR HONOUR

**65.** (1) Where a bill of exchange has been protested for dishonour by non-acceptance or protested for better security and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra protest*, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn

(2) A bill may be accepted for honour for part only of the sum for which it is drawn ,

(3) An acceptance for honour *supra protest* in order to be valid must—

(a) be written on the bill, and indicate that it is an acceptance for honour

(b) be signed by the acceptor for honour

(4) Where an acceptor for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honour

**66** (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment pay the bill according to the tenor of his acceptance if it is not paid by the drawee provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted

**67.** (1) Where a dishonoured bill has been accepted for honour *supra protest*, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment the bill must be presented to him not later than the day following its maturity, and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment the bill must be forwarded not later than the day following its maturity for presentment to him

(3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him

**68.** (1) Where a bill has been protested for non-payment, any person may intervene and pay for honour supra protest, it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference

(3) Payment for honour supra protest in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it

(4) The notarial act of honour must be founded on a declaration made by the payee of honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays and all parties liable to that party

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages

(7) Where the holder of a bill refuses to receive payment supra protest, he shall lose his right of recourse against any party who would have been discharged by such payment

## LOST INSTRUMENT

**69.** Where a bill has been lost before it is overdue, the  
 Holder's right to duplicate of lost bill      person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again

If the drawer on the request as aforesaid refuses to give such duplicate bill, he may be compelled to do so

**70.** In any action or proceeding upon a bill, the court  
 Action on lost bill      or a Judge may order that a loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or Judge against the claims of any other person upon the instrument in question

## BILL IN A SET

**71.** (1) Where a bill is drawn in a set, each part of the  
 Rules as to sets      set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill

(2) Where the holder of a set indorses two or more parts to different person he is liable on every such part and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill, but nothing in this sub-section shall affect the right to a person who in due course accepts or pays the part first presented to him

(4) The acceptance may be written on any part, and it must be written on one part only

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged

## CONFLICT OF LAWS

**72.** Where a bill drawn in one country is negotiated,  
 Rules where laws con- accepted or payable in another, the rights,  
 flict duties and liabilities of the parties  
 thereto are determined as follows —

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue and the validity as regards requisites in form of the supervening contracts, such as acceptance or indorsement or acceptance *supra protest*, is determined by the law of the place where such contract was made

Provided that—

(a) where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue

(2) Where a bill, issued out of the United Kingdom conforms as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in the United Kingdom

Provided that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer be interpreted according to the law of the United Kingdom

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour or otherwise are determined by the law of the place where the Act is done or the bill is dishonoured

(4) Where the bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable

## PART III

## CHEQUES ON A BANKER

**73.** A cheque is a bill of exchange drawn on a banker on demand Except as otherwise provided  
 Cheque defined in this part, the provisions of this Act

applicable to a bill of exchange payable on demand apply to a cheque

**Presentment of cheque  
for payment**

**74.** Subject to the provisions of this Act—

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage, through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of the bankers, and the facts of the particular case

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him

**Revocation of banker's  
authority**

**75.** The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- 1 Countermand of payment
- 2 Notice of the customer's death

#### CROSSED CHEQUES

**General and special  
crossings defined**

**76.** (1) Where a cheque bears across its face an addition of—

(a) The words "and company" or any abbreviation thereof between two parallel transverse lines with or without the words "not negotiable", or

(b) The parallel transverse lines simply, either with or without words, "not negotiable", that addition constitutes a crossing and the cheque is crossed generally

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable" that addition constitutes a crossing, and the cheque is crossed specially and to that banker

**77.** (1) A cheque may be crossed generally or specially by the drawer

(2) Where a cheque is crossed, the holder may cross it generally or specially



(3) Where a cheque is crossed generally, the holder may cross it specially

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable"

(5) Where a cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker for collection

(6) Where an uncrossed cheque or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself

**78.** A crossing authorised by this Act is a material part of the cheque, it shall not be lawful for

Crossing a material part of cheque any person to obliterate or, except as authorised by this Act, to add to or alter the crossing

**79** (1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker that banker on whom it is drawn shall

Duties of banker as to crossed cheque

refuse payment thereof

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be

**80.** Where the banker, on whom a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally, to a banker, if crossed specially, to a banker, to whom it is crossed or his agent for

Protection to banker and to drawer where cheque is crossed

collection, being a banker paying the cheque, and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof

**81.** Where person takes a crossed cheque which bears on it the words "not negotiable", he shall not be capable of giving a better title to the cheque than that which the person from whom he took it had

Effect of "not negotiable" crossing on holder

**82.** Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment

Protection to collecting banker

A banker receives payment of a crossed cheque for a customer within the meaning of section 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account of the cheque before receiving payment thereof

(6 Edw 7 Ch 17 S 1)

## PART VI

### PROMISSORY NOTES

**83.** (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or the order of, a specified person or to bearer

Promissory note defined

(2) An instrument in the form of a note payable to maker's order is not within the meaning of this section unless it is indorsed by the maker

(3) A notice is not invalid by reason only that it contains also pledge of collateral security with authority to sell or dispose thereof

(4) A note which is, or on face of it purports to be both made and payable within the British Islands is an inland note Any other note is a foreign note

**84.** A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer

Delivery necessary

**85.** (1) A Promissory note may be made by two or more makers, and they may be liable thereon jointly or jointly and severally according to its tenor

Joint and several notes

(2) Where a note runs 'I promise to pay' and is signed by two or more persons it is deemed to be their joint and several note

**86.** (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented, the indorser is discharged

Note payable on demand

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and the facts of the particular case

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue

**87.** Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable

Presentment of note for payment to charge maker

(2) Presentment for payment is necessary in order to render the indorser of a note liable

(3) Where a note is in the body of it made payable at a particular place, presentment at the place is necessary to render an indorser liable, but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice

**88.** The maker of a promissory note by making it—

Liability of maker

(1) Engages that he will pay it according to its tenor,

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse

**89.** (1) Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modification, to promissory notes

Application of part II to notes

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill and the first indorser of a note shall be deemed to correspond, with the drawer of an accepted bill payable to drawer's order

(3) The following provisions as to the bills do not apply to notes, namely provisions relating to—

(a) Presentment for acceptance,

(b) Acceptance,

(c) Acceptance supra protest,

(d) Bills in a set

(4) Where a foreign note is dishonoured, protest thereof is unnecessary

## PART V

### SUPPLEMENTARY

**90.** A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not

**91.** (1) Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature, is written thereon by some other person by or under his authority

(2) In the case of a corporation, where by this Act, any instrument or writing is required to be signed it is sufficient if the instrument or writing be sealed with the corporate seal But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal

**92.** Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded

**34 and 35 Vict c 7** "Non-business days" for the purposes of this Act mean—

(a) Sunday, Good Friday, Christmas day,

(b) A Bank Holiday under the Bank Holidays Act 1871, or Acts amending it,

(c) A day appointed by Royal Proclamation as a public fast or thanksgiving day

Any other day is a business day

**93.** For the purposes of this Act, where a bill or note is required to be protested, within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended any time thereafter as of the date of the noting

**94.** Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any house-holder or substantial resident of the place may, in the presence of two witnesses give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill

The form given in Schedule 1 to this Act may be used with necessary modification and if used shall be sufficient

**95.** The provisions of this Act as to crossed cheques shall apply to a dividend warrant for payment of dividend

**96.** The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned —

**Repeal**  
Provided that such repeal shall not affect anything done or suffered or any right, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing

**97.** (1) The rules in bankruptcy relating to bills of exchange, promissory notes and cheques shall continue to apply thereto, notwithstanding anything in this Act contained

**Savings**  
(2) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes and cheques

(3) Nothing in this Act or any repeal effected thereby shall affect—

(a) The provisions of the Stamp Act, 1870, or Acts amending it or any law or enactment for the time being in force relating to revenue

- (b) The provisions of the Companies Act, 1862, or Acts amending it or, any Acts relating to joint stock banks or companies
- (c) The provisions of any Act relating to or confirming the privileges of the Bank of England or Bank of Ireland—respectively
- (d) The validity of any usages relating to dividend warrants or the indorsement thereof

**98.** Nothing in this Act or any repeal effected thereby shall extend or restrict, or in any way alter or affect, the law and practice in Scotland in regard to summary diligence

**Savings of summary diligence in Scotland**

**99.** Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act

**Construction with other acts**

**100.** In judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque or promissory note which is relevant to any question of liability thereon, may be proved by parol evidence. Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a gist of diligence, or suspension of a charge or threatened charge to make such consignation or to find such caution as to the Court or Judge before whom the cause is depending may require

**Parol evidence allowed in certain judicial proceedings in Scotland**

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription

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## APPENDIX X

### *The Reserve Bank of India Act, 1934*

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### CHAPTER I

#### PRELIMINARY

#### SECTIONS

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### CHAPTER II

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- 

THE FIRST SCHEDULE—AREAS SERVED BY THE VARIOUS  
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THE SECOND SCHEDULE—SCHEDULED BANKS

THE THIRD SCHEDULE—PROVISIONS TO BE CONTAINED IN  
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AND THE IMPERIAL BANK OF INDIA

THE FOURTH SCHEDULE —[*Repealed* ]

THE FIFTH SCHEDULE —[*Repealed* ]

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# THE RESERVE BANK OF INDIA ACT, 1934.

ACT No II of 1934

[6th March, 1934]

(As modified up to the 1st August 1951 by The Adaptation of Laws Order, 1950)

An Act to constitute a Reserve Bank of India

WHEREAS it is expedient to constitute a Reserve Bank for India to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage

AND WHEREAS in the present disorganisation of the monetary systems of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system,

BUT WHEREAS it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures,

It is hereby enacted as follows —

## CHAPTER I

### *Preliminary*

Short title, extent and commencement.

1. (1) This Act may be called the Reserve Bank of India Act, 1934

(2) It extends to the whole of India except Part B States

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates<sup>2</sup> as the Central Government may, by notification in the Gazette of India, appoint

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1 For Statement of Objects and Reasons, see Gazette of India, 1933, Pt V, p 160 and for Report of Select Committee, see *ibid*, pp 197 to 207

For the functioning of the Reserve Bank in or in relation to Burma, after the separation of that country from India, see the M O 1937

2 Ss 2 to 19, 47, 48, 50 to 52, 55 to 58 and 61 were brought into force on 1st January, 1935 see Gazette of India, 1934, Pt I, p 1369, and the other sections on 1st April, 1935, see *ibid*, 1935, Pt I, p 358

**Definitions** **2.** In this Act, unless there is anything repugnant in the subject or context,—

- (a) "the Bank" means the Reserve Bank of India constituted by this Act,
- (b) "the Central Board" means the Central Board of Directors of the Bank,
- <sup>1</sup>[(bb) "foreign exchange" has the same meaning as in the Foreign Exchange Regulation Act, 1947],
- (c) "provincial co-operative bank" means the principal society in a Province which is registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in the Province relating to co-operative societies and primary object of which is the financing of the other societies in the Province which are or are deemed to be so registered

Provided that in addition to such principal society in a Province or where there is no such principal society in a Province the Provincial Government may declare any central co-operative society in that province to be a provincial co-operative bank within the meaning of this definition

(d) "rupee coin" means silver rupees which are legal tender in the Provinces under the provisions of the Indian Coinage Act, 1906, and

III of 1906

(e) "scheduled bank" means a bank included in the Second Schedule

(ee) 'States' means the territories for the time being comprised in Part A and Part C States

## CHAPTER II

### INCORPORATION, CAPITAL, MANAGEMENT AND BUSINESS

**3.** (1) A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of this Act

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued

**Capital of the Bank**                      **4.** The capital of the Bank shall be five crores of rupees

**5.** [*Increase and reduction of share capital* ]—*Rep by Act 62 of 1948, s 7 and Sch (w e f, 1-1-49)*

**6.** The Bank shall, as soon as may be, establish offices in Bombay, Calcutta, Delhi and Madras  
**Offices, branches and agencies**                      and a branch in London, and may establish branches or agencies in any other place in India \* \* \* or, with the previous sanction of the Central Government, elsewhere

**17.** (1) The Central Government may<sup>1</sup> from time to time give such directions to the Bank as it may, after consultation with the Governor of the Bank, consider necessary in the public interest  
**Management**

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank

(3) Save as otherwise provided in regulations made by the Central Board, the Governor shall have full powers to transact all the business of the Bank which may be transacted by the Central Board ]

**Composition of the Central Board and term of office of Directors**                      **8.** (1) The Central Board shall consist of the following Directors, namely —

- (a) a Governor and two Deputy Governors to be appointed by the Central Government,
- (b) four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted by section 9,
- (c) six Directors to be nominated by the Central Government, and
- (d) one Government official to be nominated by the Central Government

(2) The Governor and Deputy Governor shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Central Board, with the approval of the Central Government

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1 Subs by Act 62 of 1948 s 7 and Sch for the previous section

(3) A Deputy Governor and the Director nominated under clause (d) of sub-section (1) may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote

Provided that when the Governor is absent a Deputy Governor authorized by him in this behalf in writing may vote for him

(4) The Governor and a Deputy Governor shall hold office for such term not exceeding five years as the Central Government may fix when appointing them, and shall be eligible for re-appointment

[A Director nominated under clause (c) of sub-section (1) shall, subject to the provisions of sub-section (6), hold office for a period of four years]

A Director nominated under clause (d) of sub-section (1) shall hold office during the pleasure of the Central Government

(5) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board

(6) Out of the six Directors first nominated under clause (c) of sub-section (1), two shall retire at the end of one year, two at the end of two years and the last two at the end of three years, the Directors so to retire being determined by lot

(7) A retiring Director shall be eligible for re-nomination

**9.** (1) A Local Board shall be constituted for each of the four areas specified in the First Schedule and shall consist of five members to be appointed by the Central Government to represent, as far as possible, territorial and economic interests and the interests of co-operative and indigenous banks

**Local Boards, their constitution and functions**

(2) The members of the Local Board shall elect from amongst themselves one person to be the chairman of the Board

(3) The members of the Local Board shall hold office for a term of four years and shall be eligible for re-appointment

(4) A Local Board shall advise the Central Board on such matters as may be generally or specifically referred to it and shall perform such duties as the Central Board may delegate to it

**Disqualifications of Directors and Members of Local Boards**

**10.** (1) No person may be a Director or a member of a Local Board who—

- (a) is a salaried government official \* \* or
- (b) is, or at any time has been, adjudicated an insolvent, or has suspended payment or has compounded with his creditors, or
- (c) is found lunatic or becomes of unsound mind, or
- (d) is an officer or employee of any bank, or
- (e) is a Director of any Bank, other than a bank which is a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in the States \* \* relating to co-operative societies

(2) No two persons who are partners of the same mercantile firm, or are Directors of the same private company, or one of whom is the general agent of or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, may be Directors or members of the same Local Board at the same time

(3) Nothing in clause (a), clause (d) or clause (e) of sub-section (1) shall apply to the Governor, or to a Deputy Governor or to the Director nominated under clause (d) of sub-section (1) of section 8

Removal from and vacation of office	<b>11.</b> (1) The Central Government may remove from office the Governor, or a Deputy Governor or any other Director
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Proviso—Repealed by Act 62 of 1948

(2) A Director nominated under clause (b) or clause (c) of sub-section (1) of section 8 shall cease to hold office if without leave from the Central Board he absents himself from three consecutive meetings of the Board convened under sub-section (1) of section 13

(3) The Central Government shall remove from office any Director, and the Central Board shall remove from office any member of a Local Board, if such Director or member becomes subject to any of the disqualifications specified in sub-section (1) or sub-section (2) of section 10

(4) A Director or member of a Local Board removed or ceasing to hold office under the foregoing sub-sections shall not be eligible for re-appointment either as Director or as member of a Local Board until the expiry of the term for which his appointment was made

(5) The<sup>1\*</sup>, nomination \* \* as Director or member of a Local Board of any person who is a member of Parliament or the Legislature of a Part A State or a Part B State shall be void, unless, within two months of the date of his<sup>1\*</sup> nomination \* \*, he ceases to be such member, and, if any Director or member of a Local Board is elected or nominated as a member of Parliament or any such Legislature, he shall cease to be a Director or member of the Local Board as from the date of such election or nomination, as the case may be

(6) A Director may resign his office to the Central Government, and a member of a Local Board may resign his office to the Central Board, and on the acceptance of the resignation the office shall become vacant

**12.** (1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Central Government may, after consideration of the recommendations made by the Central Board in this behalf, appoint another person to officiate for him, and such person may, notwithstanding anything contained in clause (d) of sub-section (1) of section 10, be an officer of the Bank

(3) Where any casual vacancy in the office of any member of a Local Board occurs \* \* \*, the Central Board may nominate thereto any \*person recommended by the other members of the Local Board

(4) Where any casual vacancy occurs in the office of a Director other than the vacancies provided for in sub-section (1) the vacancy shall be filled, by the Central Government

(5) A person nominated \* \* under this section to fill a casual vacancy shall, \* \* \* hold office for the unexpired portion of the term of his predecessor

**13.** (1) Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter

(2) Any three Directors may require the Governor to convene a meeting of the Central Board at any time and the Governor shall forthwith convene a meeting accordingly

(3) The Governor, or in his absence the Deputy Governor

authorized by the Governor under the proviso to sub-section (3) of section 8 to vote for him, shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote

- |   |   |   |
|---|---|---|
| <p>14. [General meetings ]</p> <p>15. [First constitution of<br/>the Central Board ]</p> <p>16. [First constitution of<br/>Local Boards ]</p> | } | <p><i>Rep by Act 62 of 1948, s 7<br/>and Sch (wef 1-1-49)</i></p> |
|---|---|---|

**17.** The Bank shall be authorized

<p>Business which the Bank may transact</p>	<p>to carry on and transact the several kinds of business hereinafter specified, namely —</p>
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(1) the accepting of money on deposit without interest from, and the collection of money for \* \* \* the Central Government, \* \* \*, the Provincial Government, \* \* \*, Part B States, local authorities, banks and any other persons,

(2) (a) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in India and arising out of *bona fide* commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank \* \* \*, and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace,

(b) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank, or a Provincial Co-operative Bank and drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within nine months from the date of such purchase or rediscount, exclusive of days of grace,

(c) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled bank \* \* \* and issued or drawn for the purpose of holding or trading in securities of the Central Government or a Provincial Government, or such securities of Part B States as may be specified in this behalf by the Central Government on the recommendation of the Central Board, and



maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace,

- (3) (a) the purchase from and sale to scheduled banks \* \* \* of foreign exchange in amounts of not less than the equivalent of one lakh of rupees,
- (b) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in any country outside India which is a member of the International Monetary Fund and maturing within ninety days from the date of purchase, provided that no such purchase, sale or rediscount shall be made in India except with a scheduled bank \* \* \* \* 1

(4) the making to Part B States, local authorities, scheduled banks \* \* \* provincial co-operative banks \* \* \* and the principal currency authority of Ceylon of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against the security of—

- (a) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament of the United Kingdom or by any law for the time being in force in the Provinces \* \* \*,
- (b) gold or silver or documents of title to the same,
- (c) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Bank,
- (d) promissory notes of any scheduled bank or provincial co-operative bank, supported by documents of title to goods which have been transferred, assigned, or pledged to any such bank as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops,

(5) the making to the Central Government, \* \* \* and Provincial Government of advances repayable in each case not later than three months from the date of the making of the advance,

(6) the issue of demand drafts made payable at its own offices or agencies and the making, issue and circulation of, bank post bills,

(8) the purchase and sale of securities of the Central Govern-

ment or a Provincial Government of any maturity or of such securities of a local authority or such Indian States as may be specified in this behalf by the Central Government on the recommendation of the Central Board

Provided that securities fully guaranteed as to principal and interest by any such Government, authority or State shall be deemed for the purposes of this clause to be securities of such Government, authority or State

Provided further that the amount of such securities held at any time in the Banking Department shall be so regulated that—

- (a) the total value of such securities shall not exceed the aggregate amount of the capital of the Bank, the Reserve Fund and three-fifths of the liabilities of the Banking Department in respect of deposits,
- (b) the value of such securities maturing after one year shall not exceed the aggregate amount of the capital of the Bank the Reserve Fund and two-fifths of the liabilities of the Banking Department in respect of deposits, and
- (c) the value of such securities maturing after ten years shall not exceed the aggregate amount of the capital of the Bank and the Reserve Fund and one-fifth of the liabilities of the Banking Department in respect of deposits,

(9) the custody of monies, securities and other articles of value and the collection of the proceeds, whether principal, interest or dividends, of any such securities,

(10) the sale and realisation of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims,

(11) the acting as agent for \* \* \*, the Central Government or any Provincial Government, \* \* \* or any local authority or any Indian State in the transaction of any of the following kinds of business, namely —

- (a) the purchase and sale of gold or silver [or foreign exchange],
- (b) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company,
- (c) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares,

(d) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere,

(e) the management of public debt,

(12) the purchase and sale of gold coin and bullion and foreign exchange,

(12A) the purchase and sale of securities issued by the Government of any country outside India and expressed to be payable in a foreign currency, being in the case of purchase by the Bank, securities maturing within a period of ten years from the date of purchase<sup>1</sup>,

(13) the opening of an account with or the making of an agency agreement with, and the acting as agent or correspondent of, a bank incorporated in any country outside India or the principal currency authority of any country under the law for the time being in force in that country or any international bank formed by such principal currency authorities, and the investing of the funds of the Bank in the shares of any such international bank<sup>2</sup>,

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the bank, and the giving of security for money so borrowed

Provided that no money shall be borrowed under this clause from any person in India \* \* \* \* other than a schedule bank \* \* \* or from any person outside India \* \* \* \* other than a bank which is the principal currency authority of any country under the law for the time being in force in that country

Provided further that the total amount of such borrowings from persons in India \* \* \* shall not at any time exceed the amount of the share capital of the Bank,

(15) the making and issue of bank notes subject to the provisions of this Act \* \* \* \* ,

(15A) the performance of the functions of the Bank under the International Monetary Fund and Bank Ordinance, 1945 (XLVII of 1945) and under the Banking Companies Act, 1949) ,

(16) generally, the doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act \* \* \* \*

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1 Added by Act 23 of 1947

2 Substituted *Ibid*

**18.** (1) When, in the opinion of the Central Board \* \* \*, a special occasion has arisen making it necessary or expedient that action should be taken under this sub-section for the purpose of regulating credit in the interests of Indian \* \* \* trade, commerce, industry and agriculture, the Bank may, notwithstanding any limitation contained in sub-clauses (a) and (b) of clause (2) or sub-clause (a) or (b) of clause (3) or clause (4) of section 17,—

- (1) purchase, sell or discount any of the bills of exchange or promissory notes specified in sub-clause (a) or (b) of clause (2) or sub-clause (b) of clause (3) of that section though such bill or promissory note does not bear the signature of a scheduled bank or a provincial co-operative bank, or
- (2) purchase or sell of foreign exchange in amounts of not less than the equivalent of one lakh of rupees, or
- (3) make loans or advances repayable on demand or on the expiry of fixed periods not exceeding ninety days against the various forms of security specified in clause (4) of that section or, when the loan or advance is made to a banking company, as defined in the Banking Companies Act, 1949, (X of 1949) against such other form of security as the Bank may consider sufficient

<sup>1</sup>(2) Where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (1) is wound up, any sums due to the Bank in respect of such loan or advance, shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company

Proviso Repealed by Act 62 of 1948.

**19.** Save as otherwise provided in sections 17, 18 and 45, the Bank may not—

Business which the Bank may not transact

- (1) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims provided that all such interests shall be disposed of at the earliest possible moment,

- (2) purchase its own shares or the shares of any other bank or of any company, or grant loans upon the security of any such shares
- (3) advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and servants,
- (4) make loans or advances, .
- (5) draw or accept bills payable otherwise than on demand,
- (6) allow interest on deposits or current accounts

### CHAPTER III

#### CENTRAL BANKING FUNCTIONS

**20.** The Bank shall undertake to accept monies for account of the Central Government, the Provincial Governments and such Part B States as may be approved of and notified by the Central Government in the Gazette of India, and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the public debt

#### **20A.** Repealed

**21.** (1) The Central Government and the Provincial Governments shall entrust the Bank, on such conditions as may be agreed upon, with all their money, remittance, exchange and banking transactions in India, and, in particular, shall deposit free of interest all their cash balances with the Bank

Provided that nothing in this sub-section shall prevent the Central Government or any Provincial Government from carrying on money transactions at places where the Bank has no branches or agencies, and the Central Government and the Provincial Governments may hold at such places such balances as they may require

(2) The Central Government and each Provincial Govern-

ment shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans

(3) In the event of any failure to reach agreement on the conditions referred to in this section the [Central Government] shall decide what the conditions shall be

(4) Any agreement made under this section to which the Central Government or any Provincial Government is a party shall be laid, as soon as may be after it is made, before Parliament and in the case of a Provincial Government before the Provincial Legislature also

**22.** (1) The Bank shall have the sole right to issue bank notes in the Provinces and may, for a period which shall be fixed by the Central Government on the recommendation of the Central Board, issue currency notes of the Government of India, supplied to it by the Central Government, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Central Government or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly

(2) On and from the date on which this Chapter comes into force the Central Government shall not issue any currency notes

**23.** (1) The issue of Bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve

\* \* \* \* \*

**24.** Bank notes shall be of the denominational values of  
 Denominations of notes, <sup>1</sup>[two rupees,] five rupees, ten rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees and ten thousand rupees, unless otherwise directed by the Central Government on the recommendation of the Central Board

**25.** The design, form and material of bank notes shall be such as may be approved by the Central Government after consideration of the recommendations made by the Central Board

**26.** (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in the Provinces in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government

(2) On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank

\* \* \* \* \*

**27.** The Bank shall not re-issue bank notes which are torn, defaced or excessively solid

**28.** Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Central Government or the Bank, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India, or bank note

Provided that the Bank may, with the previous sanction of the Central Government, prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of Parliament

\* \* \* \* \*

**29.** The Bank shall not be liable to the payment of any stamp duty on bank notes. Bank exempt from stamp duty under the Indian Stamp Act, 1899 (II of 1899), in respect of bank notes issued by it

**30.** (1) If in the opinion of the Central Government the Bank fails to carry out any of the obligations imposed on it by or under this Act \* \* \* \* the Central Government may, by notification in the Gazette of India, declare the Central Board to be superseded, and thereafter the Powers of Central Government to supersede Central Board

general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Central Government may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act

(2) When action is taken under this section the Central Government shall cause a full report of the circumstances leading to such action and of the action taken to be laid before Parliament at the earliest possible opportunity and in any case within three months from the issue of the notification superseding the Board

**31** (1) No person in the Provinces other than the Bank or, as expressly authorised by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person

Issue of demand bills and notes  
Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker shroff or agent

<sup>1</sup>(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (XXVI of 1881), no person in <sup>2</sup>[the Provinces] other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument

**32.** (1) Any person contravening the provisions of section 31 shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is omitted

(2) No prosecution under this section shall be instituted except on complaint made by the Bank

**33.** (1) The assets of the Issue Department shall consist of gold coin, gold bullion, foreign securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as herein-after defined

(2) Of the total amount of the assets, not less than two-fifths shall consist of gold coin, gold bullion or foreign securities



Provided that the amount of gold coin and gold bullion shall not at any time be less than forty crores of rupees in value

(3) The remainder of the assets shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes payable in the Provinces as are eligible for purchase by the Bank under sub-clause (a) or sub-clause (b) of clause (2) of section 17 or under clause (1) of section 18

Proviso—repealed by Ordinance 3 of 1941

(4) For the purposes of this section, gold coin and gold bullion shall be valued at 847512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and securities shall be valued at the market rate for the time being obtaining

(5) Of the gold coin and gold bullion held as assets, not less than seventeen-twentieths shall be held in [the Provinces], and all gold coin and gold bullion held as assets shall be held in the custody of the Bank or its agencies

Provided that gold belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the assets

<sup>1</sup>(6) For the purposes of this section, the foreign securities which may be held as part of the assets shall be securities of the following kinds payable in the currency of any foreign country which is a member of the International Monetary Fund, namely —

- (a) balances at the credit of the Issue Department with the bank which is the principal currency authority of that foreign country, or, if there is no such bank, with any bank incorporated in that foreign country,
- (b) bills of exchange bearing two or more good signatures and drawn on and payable at any place in that foreign country and having a maturity not exceeding ninety days, and
- (c) Government securities of that foreign country maturing within five years

**34.** (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation

(2) For the purposes of this section, any currency note of

1 Subs by Act 62 of 1948, s 7 and Sch, for the original sub-section

the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in sub-section (2) of section 23, be paid by the Issue Department to the Central Government or the Banking Department, as the case may be, but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Central Government

2\*                      \*                      \*                      \*                      \*

**35.** [*Initial assets and liabilities*]*—Rep by Act 62 of 1948, sec 7 and Schedule (w e f 1-1-49)*

**36.** (1) After the close of any financial year in which the minimum amount of rupee coin held in the assets, as shown in any of the weekly accounts of the Issue Department for that year prescribed under sub-section (1) of sec 53 is greater than fifty crores of rupees or one-sixth of the total amount of the assets as shown in that account, whichever may be the greater, the Bank may deliver to the Central Government rupee coin, up to the amount of such excess but not without that Government's consent exceeding five crores of rupees, against payment of legal tender value in the form of bank notes, gold or securities

Provided that if the Bank so desires and if the amount of gold coin, gold bullion and sterling securities in the assets does not at that time exceed one-half of the total assets, a proportion not exceeding two-fifths of such payment shall be in gold coin, gold bullion or such sterling securities as may be held as part of the assets under sub-section (6) of section 33

(2) After the close of any financial year in which the maximum amount of rupee coin held in the assets, as so shown, is less than fifty crores of rupees or one-sixth of the total amount of the assets, as so shown, whichever may be the greater, the Central Government shall deliver to the Bank rupee coin up to the amount of such deficiency, but not without its consent exceeding five crores of rupees, against payment of legal tender value

(3) At the close of any week in which the amount of rupee coin held in the assets, as shown in the weekly accounts of the Issue Department for that week, is less than fifty crores of

2 Sub-section (3) was rep by s 19 of Act 11 of 1947

1 Added by s 3 of Ordinance 4 of 1940

rupees or one-sixth of the total amount of the assets as so shown, whichever may be the greater, the Central Government may, with the consent of the Bank, deliver to the Bank rupee coin up to the amount of such deficiency against payment of legal tender value

**37.** (1) Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Central Government for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold as assets gold coin, gold bullion or sterling securities of less aggregate amount than that required by sub-section (2) of section 33 and, whilst the holding is so reduced, the proviso to that sub-section shall cease to be operative

Provided that the gold coin and gold bullion held as such assets shall not be reduced below the amount specified in the proviso to sub-section (2) of section 33 so long as any sterling securities remain held as such assets

(2) In respect of any period during which the holding of gold coin, gold bullion and sterling securities is reduced under sub-section (1), the Bank shall pay to the Central Government a tax upon the amount by which such holding is reduced below the minimum prescribed by sub-section (2) of section 33, and such tax shall be payable at the bank rate for the time being in force, with an addition of one per cent per annum when such holding exceeds thirty-two and a half per cent of the total amount of the assets and of a further one and a half per cent per annum in respect of every further decrease of two and a half per cent or part of such decrease

Provided that the tax shall not in any event be payable at a rate less than six per cent per annum

**38.** The Central Government shall undertake not to re-issue any rupee coin delivered under section 36 nor to put into circulation any rupees, except through the Bank \* \* \*, and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Central Government under that section

1 The words "and as provided in that section" were rep by s 3 of Ordinance 4 of 1940

**39.** (1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906 (III of 1906)

(2) The Bank shall, in exchange for currency notes or bank notes of <sup>2</sup>two rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906 (III of 1906), in such quantities as may, in the opinion of the Bank, be required for circulation, and the <sup>1</sup>Central Government shall supply such coins to the Bank on demand. If the Central Government at any time fails to supply such coins, the Bank shall be released from its obligations to supply them to the public

**340.** The Bank shall sell to or buy from any authorised person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras, foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine, having regard so far as rates of exchange are concerned to its obligations to the International Monetary Fund

Provided that no person shall be entitled to demand to buy or sell foreign exchange of a value less than two lakhs of rupees

In this section "authorised person" means a person who is entitled by or under the Foreign Exchange Regulation Act, 1947, to buy, or as the case may be, sell, the foreign exchange to which his demand relates

**41A.** [*Obligation to provide remittance between India and Burma* ]—*Rep by sec 22 of Act 11 of 1947*

**42.** (1) Every bank included in the Second Schedule shall maintain with the Bank a balance of the amount of which shall not at the close of business on any day be less than five per cent of the demand liabilities and two per cent of the time liabilities of such bank in India as shown in the return referred to in sub-section (2)

<sup>2</sup> Subs by Act 62 of 1948, s 7 and Sch, for "five" (*we f* 1-1-49)

<sup>3</sup> Subs by s 4 of Act 23 of 1947 for the original sections 40 and 41.

For the purposes of this section liabilities shall not include the paid-up capital or the reserves, or

**Explanation** any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Reserve Bank

(2) Every scheduled bank shall send to the Central Government and to the Bank a return signed by two responsible officers of such bank showing—

- <sup>1</sup>(a) the amounts of its demand and time liabilities, respectively, in India,
- <sup>2</sup>(b) the total amount held in India in currency notes of the Government of India and bank notes,
- (c) the amounts held in India in rupee coin and subsidiary coin, respectively,
- (d) the amounts of advances made and of bills discounted in India, respectively,
- (e) the balance held at the Bank,

at the close of business on each Friday, or if Friday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day, and such return shall be sent not later than two working days after the date to which it relates

Provided that where the Bank is satisfied that the furnishing of a weekly return under this sub-section is impracticable in the case of any scheduled bank by reason of the geographical position of the bank and its branches, the Bank may require such bank to furnish in lieu of a weekly return a monthly return to be despatched not later than fourteen days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month

(3) If at the close of business on any day before the day fixed for the next return, the balance held at the Bank by any scheduled bank is below the minimum prescribed in sub-section (1), such scheduled bank shall be liable to pay to the Bank in respect of each such day penal interest at a rate three per cent above the bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum, and if on the day fixed for the next return such balance is still below the prescribed minimum as disclosed by this return, the rates of penal interest shall be increased to a rate five per cent above the bank rate

1 Clauses (a) to (k) were subs for the original clauses (a) to (e) by the MO 1937

2 These clauses were subs for the clauses (b) to (k) by s 23 of Act 11 of 1947

in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the prescribed minimum

<sup>1</sup>(3A) When under the provisions of sub-section (3) penal interest at the increased rate of five per cent above the bank rate has become payable by a scheduled bank, if thereafter on the day fixed for the next return the balance held at the Bank is still below the prescribed minimum as disclosed by this return,—

(a) every director and any managing agent, manager or secretary of the scheduled bank, who is knowingly and wilfully a party to the default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent day on which the default continues, and

(b) the Bank may prohibit the scheduled bank from receiving after the said day any fresh deposit,

and, if default is made by the scheduled bank in complying with the prohibition referred to in clause (b), every director and officer of the scheduled bank who is knowingly and wilfully a party to such default or who through negligence or otherwise contributes to such default shall in respect of each such default be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each day after the first on which a deposit received in contravention of such prohibition is retained by the scheduled bank

In this sub-section "officer" includes a managing agent, manager, secretary, branch manager, and branch secretary

**Explanation**

(4) Any scheduled bank failing to comply with the provisions of sub-section (2) shall be liable to pay to the Central Government or to the Bank, as the case may be, or to each, a penalty of one hundred rupees for each day during which the failure continues

(5) The penalties imposed by sub-sections (3) and (4) shall be payable on demand made by the Bank, and, in the event of a refusal by the defaulting bank to pay on such demand, may be levied by a direction of the principal Civil Court having jurisdiction in the area where an office of the defaulting bank is situated, such direction to be made only upon application made in this behalf to the Court by the Central Government in the case of a failure to make a return under sub-section (2) to the Central Government, or by the Bank with the previous sanction of the Central Government in other cases

<sup>1</sup>(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,—

(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any Province of India and which—

- (i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and
- (ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and
- (iii) is a company as defined in clause (2) of sec 2 of the Indian Companies Act, 1913 (VII of 1913) or a corporation or a company incorporated by or under any law in force in any place outside the Provinces of India,

(b) direct the exclusion from that Schedule of any scheduled bank,—

- (i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or
- (ii) which is, in the opinion of the Bank after making an inspection under section 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or
- (iii) which goes into liquidation or otherwise ceases to carry on banking business

Provided that the Bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under sub-clause (i) or sub-clause (ii) of clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs,

(c) alter the description in that Schedule whenever any scheduled bank changes its name

*Explanation*—In this sub-section the expression “value”

1 Subs. by Act 10 of 1949, s. 55 and Sch I, for the former sub-section (*wef*, 16-3-49)

means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned, and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of this sub-section

**43.** The Bank shall compile and shall cause to be published each week a consolidated statement showing the aggregate of the amounts under each clause of sub-section (2) of section 42 exhibited in the returns received from scheduled banks under that section

**Publication of consolidated statement by the Bank**

**44.** The Bank may require any provincial co-operative bank with which it has any transactions under section 17 to furnish the return referred to in sub-section (2) of section 42, and if it does so, the provisions of sub-sections (4) and (5) of section 42 shall apply so far as may be to such co-operative banks as if it were a scheduled bank

**Power to require returns from co-operative Banks**

**45. (1)** The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Central Government and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for fifteen years and thereafter until terminated after five years' notice on either side, and shall further contain the provisions set forth in the Third Schedule

**Agreement with the Imperial Bank**

Provided that the agreement shall be conditional on the maintenance of a sound financial position by the Imperial Bank and that if, in the opinion of the Central Board, the Imperial Bank has failed either to fulfil the conditions of the agreement or to maintain a sound financial position, the Central Board shall make a recommendation to the Central Government, and the Central Government, after making such further inquiry as it thinks fit, may issue instructions to the Imperial Bank with reference either to the agreement or to any matter which in its opinion involves the security of the Government monies or the assets of the Issue Department in the custody of the Imperial Bank, and in the event of the Imperial Bank disregarding such instructions may declare the agreement to be terminated

(2) The agreement referred to in sub-section (1) shall, as soon as may be after it is made, be laid before Parliament

(3) As from the commencement of Part III of the Government of India Act, 1935 (26 Geo 5, c 2), references in the said



agreement to the Governor-General in Council in relation to his general banking business, his accounts, and sums due to or from him, and references to Government in relation to receipts and disbursements dealt with on account of Government shall be construed as including references to the Governments of Part A States

## CHAPTER IV

### GENERAL PROVISIONS

**46.** The Central Government shall transfer to the Bank Contribution by Central Government to the Reserve Fund rupee securities of the value of five crores of rupees to be allocated by the Bank to the Reserve Fund

**47.** After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and Allocation of surplus profits such other contingencies as are usually provided for by bankers, the balance of the profits shall be paid to the Central Government

**48.** (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922 (XI of 1922), or any other enactment for the time being in force relating to income-tax or super-tax, the Bank shall not be Exemption of Bank from income-tax and super-tax, liable to pay income-tax or super-tax on any of its income, profits or gains

Proviso and sub-section (2) repealed by Act 62 of 1948

**49.** The Bank shall make public from time to time the standard rate at which it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under this Act Publication of Bank rate.

**50.** (1) Not less than two auditors shall be appointed, and their remuneration fixed, by the Auditors Central Government

(2) The auditors shall hold office for such term not exceed

1 Subs by Act 62 of 1948, s 7 and Sch, for the former section

1 Substituted by Act 62 of 1948

ing one year as the Central Government may fix while appointing them, and shall be eligible for re-appointment

**51.** Without prejudice to anything contained in sec 50, the Central Government may at any time appoint the Auditor General<sup>2</sup> \* \* \* \* to examine, and report upon the accounts of the Bank

Appointment of special auditors by Government

**52.** (1) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it or at the expense of the Central Government if appointed by that Government employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts examine any Director or officer of the Bank

Powers and duties of auditors

(2) The auditors shall make a report<sup>2</sup> \* \* \* \* to the Central Government<sup>2</sup> \* \* \* \* upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory

1 \* \* \* \* \*

**53** (1) The Bank shall prepare and transmit to the Central Government a weekly account of the Issue Department and of the Banking Department in such forms as the Central Government may, by notification in the Gazette of India, prescribe. The Central Government shall cause these accounts to be published weekly in the Gazette of India

Returns

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit

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2 Words repealed *Ibid*

1 The words "Any such report made to the shareholders shall be read, together with the report of the Central Board, at the annual general meeting" were rep by Act 62 of 1948, s 7 and Sch (*we f* 1-1-49)

to the Central Government a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors, together with a report by the Central Board on the working of the Bank throughout the year, and the Central Government shall cause such accounts and report to be published in the Gazette of India

\* \* \* \* \*

**54.** The Bank shall create a special Agricultural Credit Department the functions of which shall be—

- (a) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Central Government, Provincial Governments, provincial co-operative banks, and other banking organisations,
- (b) to co-ordinate the operations of the Bank in connection with agricultural credit and its relations with provincial co-operative banks and any other banks or organisations engaged in the business of agricultural credit

**55.** [*Reports by the Bank*]

**56.** [*Power to require declaration as to ownership of registered shares*]

} *Rep by Act 62 of 1948 s 7 and Sch (wef 1-1-49)*

**57.** (1) Nothing in the Indian Companies Act, 1913 (VII of 1913), shall apply to the Bank, and the Bank shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct

**58.** (1) The Central Board may, with the previous sanction of the <sup>2</sup>[Central Government], make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act

(2) In particular and without prejudice to the generality of

2 Sub-section (3) was rep by Act 62 of 1948, s 7 and Sch (wef 1-1-49).

1. Sub-section (2) was rep by Act 62 of 1948, s 7 and Sch (wef 1-1-49).

2 Subs by the M O 1937, for "G G in C"

the foregoing provision, such regulations may provide for all or any of the following matters, namely

- \*                      \*                      \*                      \*                      \*
- (f) the manner in which the business of the Central Board shall be transacted, and the procedure to be followed at meetings thereof,
  - (g) the conduct of business of Local Boards and the delegation to such Boards of powers and functions,
  - (h) the delegation of powers and functions of the Central Board to the Governor, or to Deputy Governors, Directors or officers of the Bank,
  - (i) the formation of Committees of the Central Board, the delegation of powers and functions of the Central Board to such Committees, and the conduct of business in such Committees,
  - (j) the constitution and management of staff and superannuation funds for the officers and servants of the Bank,
  - (k) the manner and form in which contracts binding on the Bank may be executed,
  - (l) the provision of an official seal of the Bank and the manner and effect of its use,
  - (m) the manner and form in which the balance-sheet of the Bank shall be drawn up, and in which the accounts shall be maintained,
  - (n) the remuneration of Directors of the Bank,
  - (o) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank,
  - (p) the regulation of clearing-houses for the scheduled banks,
  - (q) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded, and
  - (r) generally, for the efficient conduct of the business of the Bank

(3) Copies of all regulations made under this section shall be available to the public on payment,

**59 to 61.** [*Amendment of Act III of 1906 Repeals Amendment of section 11, Act VII of 1913*] *Rep by the Repealing and Amending Act, 1937 (XX of 1937), s 3 and Sch II* -

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3 Clauses (a) to (e) were rep by Act 62 of 1948, s 7 and Sch (wef 1-1-49)

## THE FIRST SCHEDULE

(See section 9)

"1 The Western Area shall consist of the States of Bombay, Madhya Pradesh, Hyderabad, Saurashtra, Cutch, Madhya Bharat and Bhopal

2 The Eastern Area shall consist of the States of West Bengal, Bihar, Orissa, Assam, the Andaman and Nicobar Islands, Manipur, Vindhya Pradesh and Tripura

3 The Northern Area shall consist of the States of Uttar Pradesh, Punjab, Delhi, Ajmer, Kashmir, Himachal Pradesh, Patiala and the East Punjab States Union, Bilaspur and Rajasthan

4 The Southern Area shall consist of the States of Madras, Coorg, Mysore and Travancore-Cochin "

## THE SECOND SCHEDULE

See section 42 and section 2 (e)

**Scheduled Banks.**

Ajodhya Bank, Fyzabad  
 Allahabad Bank  
 American Express Company Incorporated  
 Banco Nacional Ultramarino  
 Bank of Baroda  
 Bank of Behar  
 Bank of Hindustan, Madras  
 Bengal Central Bank  
 Canara Bank  
 Central Bank of India  
 Chartered Bank of India, Australia and China.  
 Comptoir National d'Escompte de Paris  
 Eastern Bank  
 Grindlay and Company  
 Hongkong and Shanghai Banking Corporation.  
 Imperial Bank of India  
 Indian Bank, Madras  
 Karnati Industrial Bank  
 Lloyds Bank  
 Mercantile Bank of India  
 National Bank of India  
 National City Bank of New York  
 Nedungadi Bank, Calicut  
 Netherlands India Commercial Bank, N V  
 Netherlands Trading Society  
 Oudh Commercial Bank  
 Punjab and Sind Bank, Amritsar  
 Union Bank of India, Bombay

<sup>1</sup>Nadar Bank, Tuticorin  
 Comilla Union Bank, Comilla  
 Indo-Commercial Bank, Mayavaram  
 Comilla Banking Corporation, Comilla  
 Canara Banking Corporation, Udipi  
 Canara Industrial and Banking Syndicate, Udipi  
 Indian Overseas Bank, Madras  
 Mahaluxmi Bank, Chittagong  
 Nath Bank, Calcutta  
 Palai Central Bank, Palai  
 Calcutta National Bank, Calcutta  
 Devakaran Nanjee Banking Company, Bombay  
 Jwala Bank Ltd, Agra  
 New Citizen Bank of India, Bombay  
 Pioneer Bank, Comilla  
 Calcutta Commercial Bank, Calcutta  
 Noakhali Union Bank, Calcutta  
 United Industrial Bank, Calcutta  
 Dinajpore Bank, Dinajpore  
 Laxmi Bank, Akola  
 Bank of China, Calcutta  
 Bank of Communications, Calcutta  
 National Savings Bank, Ltd, Bombay  
 United Commercial Bank, Ltd, Calcutta  
 Hind Bank Ltd, Calcutta  
 Traders Bank, Ltd, Lahore  
 New Bank of India, Ltd, Lahore  
 Exchange Bank of India and Africa, Ltd, Bombay  
 Universal Bank of India, Ltd, Dalmanagar  
 Bank of Jaipur, Jaipur  
 National Bank of Lahore, Lahore  
 Narang Bank of India, Lahore  
 Hindustan Commercial Bank, Cawnpore  
 Oriental Bank of Commerce, Lahore  
 Bank of Mysore, Bangalore  
 Andhra Bank, Masulipatam  
 Hooghly Bank, Calcutta  
 Bank of Nagpur, Ltd, Wardha  
 Hindustan Mercantile Bank, Calcutta  
 Gadodia Bank, Bombay  
 Prabhat Bank, Lahore  
 Pratap Bank, New Delhi  
 Indo-Mercantile Bank, Cochin  
 Bareilly Corporation Bank, Bareilly  
 Bank of Maharashtra, Poona  
 Tripura Modern Bank, Agartala  
 Kumbakonam Bank, Ltd, Kumbakonam  
 Bank of Bikaner Ltd, Bikaner  
 Jodhpur Commercial Bank, Ltd, Jodhpur  
 South India Bank, Ltd, Tinnevely  
 Bank of Assam Ltd, Shillong  
 Tanjore Permanent Fund, Ltd, Tanjore  
 Southern Bank, Ltd, Calcutta

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1 These Banks were included in the Schedule by notifications issued from time to time under s 42 (6) of the Act. The Banks excluded by such notifications and by the MO 1937, have been omitted from the Schedule

Travancore Bank, Ltd, Trivandrum Taluk  
 Australasia Bank, Ltd, Lahore  
 South Indian Bank, Ltd, Trichur  
 Lakshmi Commercial Bank, Ltd, Rawalpindi  
 Bharatha Lakshmi Bank, Ltd, Masulipatam  
 Bankers Union, Ltd, Calcutta  
 Presidency Industrial Bank, Ltd, Kottayam  
 Travancore Forward Bank, Ltd, Kottayam  
 Hyderabad State Bank, Hyderabad (Deccan)  
 Bank of Poona, Ltd, Poona  
 Vysya Bank, Ltd, Bangalore City  
 Mercantile Bank of Hyderabad, Ltd, Hyderabad (Deccan)  
 Bank of Rajasthan, Ltd, Udaipur  
 Habib Bank, Ltd  
 Bharat Bank, Ltd, Delhi  
 Belgaum Bank  
 Maraj State Bank

### THE THIRD SCHEDULE

(See section 45)

Provisions to be contained in the agreement between the Reserve Bank of India and the Imperial Bank of India

1 The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in the Provinces where there is a branch of the Imperial Bank of India which was in existence at the commencement of the Reserve Bank of India Act, 1934 and there is no branch of the Banking Department of the Reserve Bank of India

2 In consideration of the performance at the places referred to in clause 1 by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the <sup>2</sup>Central Government before the coming into force of the Reserve Bank of India Act, 1934 the Reserve Bank of India shall pay to the Imperial Bank of India as remuneration a sum which shall be for the first ten years during which this agreement is in force a commission calculated at one-sixteenth of one per cent on the first 250 crores and one thirty-second of one per cent on the remainder of the total of the receipts and disbursements dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India At the close of the said ten years the remuneration to be paid by the Reserve Bank of India to the Imperial Bank of India for the performance of these functions shall be revised and the remuneration for the ensuing five years shall be determined on the basis of the actual cost to the Imperial Bank of India, as ascertained by expert accounting investigation, of performing the said functions The remuneration so determined shall thereafter be subject to revision in like manner at the end of each period of five years so long as this agreement remains in force If any dispute arises between the Reserve Bank of India and the Imperial Bank

1 Subs by the A O 1948 for "British India"

2 Subs by the M O 1937 for "G G in C"

3 Subs for "as he thinks fit" *ibid*

of India as to the amount of the said remuneration the matter shall be referred for final decision to the <sup>2</sup>Central Government who may require from the Imperial Bank such information and may order such accounting investigation <sup>3</sup> as it thinks fit

3 In consideration of the maintenance by the Imperial Bank of India of branches not less in number than those existing at the commencement of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall, until the expiry of fifteen years from the coming into force of this agreement, make to the Imperial Bank of India the following payments, namely —

- (a) during the first five years of this agreement—nine lakhs of rupees per annum,
- (b) during the next five years of the agreement—six lakhs of rupees per annum, and
- (c) during the next five years of the agreement—four lakhs of rupees per annum

4 The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force

THE FOURTH SCHEDULE—*Rep by Act 62 of 1948, s 7 and Sch. (w e f 1-1-49)*

THE FIFTH SCHEDULE—*Rep by the M O 1937*



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**ERRATA.**

- Page 4, line 31, for 'resumed' read received  
P 36, last line for 'without' read within  
P 38, line 19, for '1912' read 1919  
P 47, line 2, for 'VII' read VIII  
P 85, line 19 for 'drawee' read drawer  
P 87, line 17, for 'drawer' read drawee
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